Local Rules of the U.S. District Court For the District of Massachusetts

LIST OF RULES

PREFACE

At the request of the Committee on Rules and Practice of the Judicial Conference of the United States, local rules dealing with civil practice have been renumbered to key them to the Federal Rules of Civil Procedure. Accordingly, the numbering is not sequential. Criminal Rules will be numbered from 100 to 199, and district court rules relating to bankruptcy from 200 to 299.

Rule 1.1
TITLE

These rules shall be known as Local Rules of the United States District Court for the District of Massachusetts and cited as "LR, D. Mass." or "LR."

Rule 1.2
APPLICATION

(A) In General. These rules shall apply to all proceedings in the United States District Court for the District of Massachusetts.

(B) Cases Pending When Rules Adopted and Amended. These rules became effective in this form on September 1, 1990, and have been amended from time to time thereafter. They shall, except as applicable time periods may have run, govern all actions and proceedings pending on or commenced after the date of adoption or amendment. Where justice so requires, proceedings in designated cases or other matters before the court on the effective date of the adoption or amendment of these rules shall be governed by the practice of the court before the adoption of these rules.

Rule 1.3
SANCTIONS

Failure to comply with any of the directions or obligations set forth in, or authorized by, these Local Rules may result in dismissal, default, or the imposition of other sanctions as deemed appropriate by the judicial officer.

Rule 3.1
CIVIL COVER SHEET

The party filing the initial pleading shall also file a civil cover sheet in the form prescribed by the Judicial Conference of the United States (JS 44) and the local category sheet.

Rule 4.1
SERVICE OF PROCESS—DISMISSAL FOR FAILURE TO MAKE SERVICE

(A) Any summons not returned with proof that it was served within one-hundred twenty (120) days of the filing of the complaint is deemed to be unserved for the purpose of Fed. R. Civ. P. 4(j).

(B) Counsel and parties appearing *pro se* who seek to show good cause for the failure to make service within the 120 day period prescribed by Fed. R. Civ. P. 4(m) shall do so by filing a motion for enlargement of time under Fed. R. Civ. P. 6(b), together with a supporting affidavit. If on the tenth day following the expiration of the 120 day period good cause has not been shown as provided herein, the clerk shall forthwith automatically enter an order of dismissal for failure to effect service of process, without awaiting any further order of the court. The clerk shall furnish a copy of this local rule to counsel or *pro se* plaintiffs, together with the summons, and delivery of this copy by the clerk will constitute the notice required by Rule 4(m) Federal Rules of Civil Procedure. Such notice shall constitute the notice required by Fed.R.Civ.P. 4(m). No further notice need be given by the court.

(C) In those cases where the Federal Rules of Civil Procedure authorize service of process to be made in accordance with state practice, it shall be the duty of counsel for the party seeking such service to furnish to the Clerk of Court forms of all necessary orders and sufficient copies of all papers to comply with the requirements of the state practice, together with specific instructions for the making of such service, if such service is to be made by the United States marshal.

Rule 4.5
FEES

(a) Except as otherwise provided by law, the clerk and other officers and employees of the court shall not be required to perform any service for a party other than the United States for which a fee is lawfully prescribed, unless the amount of the fee, if it is known, or an amount sufficient to cover the fee reasonably expected by the officer to come due for performance of the service has been deposited with the court.

(b) This provision shall not apply to the United States or a party who is proceeding *in forma pauperis*, or in any other situation where, in the judgment of the officer entitled to a fee, it is unnecessary to ensure payment of the fee and would work hardship or an injustice.

(c) The clerk shall receive for filing all complaints accompanied by a request to proceed *in forma pauperis*, and note the date thereon. If the request is denied, the matter will be noted on the miscellaneous business docket. If the request is allowed, or the denial is reversed, the clerk shall file the complaint on the civil docket. Requests to proceed *in forma pauperis* shall be accompanied by an affidavit containing details of the individual's financial status. (The recommended form is available without charge from the clerk's office.)

(d) In seamen's cases, or cases in which the plaintiff is granted leave to proceed *in forma pauperis*, the plaintiff remains liable for filing and other fees in the event he is the prevailing party at settlement or otherwise, and he collects a money judgment or any costs taxed by the court or clerk. These fees are payable forthwith upon collection of any sums from the defendant.

(e) The clerk shall on request file notices of appeal whether or not accompanied by the required filing fee.

Rule 5.1
FORM AND FILING OF PAPERS

(a) Form and Signing of Papers.

(1) The provisions of the Federal Rules of Civil Procedure pertaining to the form and signing of pleadings, motions, and other papers shall be applicable to all papers filed in any proceeding in this court. The board of bar overseers registration number of each attorney signing such documents, except the United States Attorney and his staff, shall be inscribed below the signature.

(2) All papers filed in the court shall be adapted for flat filing, be filed on 8½" x 11" paper without backers and be bound by removable paper or binder clips. All papers, except discovery requests and responses, shall be double-spaced except for the identification of counsel, title of the case, footnotes, quotations and exhibits. Discovery requests and responses shall be single-spaced. Except for complaints and notices of appeal, papers that do not conform to the requirements of this subsection shall be returned by the clerk.

(b) Time and Place of Filing. Except as noted in Rule 33-36(f), the original of all papers required to be served under Fed. R. Civ. P. 5(d) shall, unless otherwise submitted to the court, be filed in the office of the clerk within three (3) days after service has been made.

(c) Requests for Special Action. When any pleading or other paper filed in the court includes a request for special process or relief, or any other request such that, if granted, the court will proceed other than in the ordinary course, the request shall, unless it is noted on the category sheet [*see* Rule 40.1(a)(1)], be noted on the first page to the right of or immediately beneath the caption.

(d) Additional Copies. Whenever, because of the nature of a proceeding, such as a proceeding before a three-judge district court under 28 U.S.C. § 2284, additional copies of a paper required to be filed are necessary either for the use of the court or to enable the clerk to carry out his duties, it is the responsibility of the party filing or having filed the paper to provide the necessary copies.

(e) Removal of Papers. Except as otherwise provided, papers filed in the office of the clerk shall not be removed from the office except by a judge, official, or employee of the court using the papers in official capacity, or by order of the court. All other persons removing papers from the office of the clerk shall prepare, sign and furnish to the clerk a descriptive receipt therefor in a form satisfactory to the clerk.

Rule 5.2
SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

(a) Manner of Service. Service of all pleadings subsequent to the original complaint and of all other papers required to be served shall be made in the manner specified by Rule 5, Federal Rules of Civil Procedure.

(b) Proof of Service.

(1) Except as otherwise provided by the Federal Rules of Civil Procedure, proof of service of all pleadings and other papers required to be served (except discovery papers that in accordance with Rule 33-36(f) are not to be filed) shall be filed in the office of the clerk promptly after service has been made. The proof shall show the time and manner of service, and may be made by written acknowledgment of service, a certificate of a member of the bar of this court, or an affidavit of the person who served the paper.

(2) A certificate of service of a member of the bar shall appear at the bottom of or on the margin of the last page of the paper to which it relates. The certificate shall be a brief, single-spaced statement and may be in the following form:

> I hereby certify that a true copy of the above document was served upon (each party appearing *pro se* and) the attorney of record for each other party by mail (by hand) on (date). (Signature)

On or after the effective date of these local rules, documents not conforming to the requirements of this rule (except notices of appeal) shall be returned by the clerk.

(3) Failure to make proof of service does not affect the validity of the service.

(c) Service on Nonresident Attorney or Party Acting *Pro Se*.

(1) Nonresident attorney. On application of a party, the court may order an attorney who represents any other party and who does not maintain an office within this district where service can be made on him by delivery as provided by Rule 5(b), Federal Rules of Civil Procedure, to designate a member of the bar of this court who does maintain such an office to receive service of all pleadings and other papers in his behalf.

(2) Party acting pro se. On application of a party, the court may order any other party who is appearing without an attorney and who does not maintain an office or residence within this district where service can be made on him by delivery as provided by Rule 5(b), Federal Rules of Civil Procedure, to designate an address within the district at which service can be made on him by delivery.

Rule 5.3
PERSONAL DATA IDENTIFIERS

(A) Restrictions on Personal Identifiers in Filings.
In compliance with the policy of the Judicial Conference of the United States, and the E-Government Act of 2002, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all filings submitted to the court, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the court.

(1) Social Security numbers. If an individual's social security number must be included in a filing, only the last four digits of that number should be used.

(2) Names of minor children. If the involvement of a minor child must be mentioned, only the initials of that child should be used.

(3) Dates of birth. If an individual's date of birth must be included in a pleading, only the year should be used.

(4) Financial account numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.

(B) Non-Redacted Filings Under Seal.
In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may file an unredacted document under seal, pursuant to Local Rule 7.2. This document shall be retained by the court as part of the record. The court may, however, still require the party to file a redacted copy for the public file.

(C) Responsibility for Redaction.
The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk will not review each pleading for compliance with this rule.

Rule 5.4
FILING AND SERVICE BY ELECTRONIC MEANS

(A) Electronic Filing Generally. Unless exempt or otherwise ordered by the court, all pleadings and other papers submitted to the court must be filed, signed, and verified by electronic means as provided herein.

(B) ECF Administrative Procedures. Subject to the supervision of the court, the clerk will maintain Electronic Case Filing (ECF) Administrative Procedures, including procedures for the registration of attorneys and other authorized users and for distribution of passwords to permit electronic filing. All electronic filings must be made in accordance with the ECF Administrative Procedures. The ECF Administrative Procedures will be generally available to the public and shall be posted on the court's web site.

(C) Service of Pleadings. Unless exempt or otherwise ordered by the court, all pleadings and other papers must be served on other parties by electronic means. Transmission of the Notice of Electronic Filing (NEF) through the court's transmission facilities will constitute service of the filed document upon a registered ECF user. Any pleading or other paper served by electronic means must bear a certificate of service in accordance with Local Rule 5.2(b).

(D) Deadlines. Although the ECF system is generally available 24 hours a day for electronic filing, that availability will not alter filing deadlines, whether set by rule, court order, or stipulation. All electronic transmissions of documents must be completed prior to 6:00 p.m. to be considered timely filed that day.

(E) Civil Case Opening Documents. Civil case opening documents, such as a complaint (or petition or notice of removal), summons, civil action cover sheet, or category sheet, must be filed and served in paper format, not electronically. Unless exempt or otherwise ordered by the court, at the time a civil case is opened, the filing party must also file a disk with the clerk's office containing the opening documents in PDF format.

(F) State Court Record in Removal Proceedings. Within thirty days after filing a notice of removal in a civil action, a party removing an action under 28 U.S.C. §§ 1441-52 must file certified or attested copies of all docket entries, records, and proceedings in the state court in paper format. Unless exempt or otherwise ordered by the court, the removing party must also file a disk with the clerk's office containing the state court record in PDF format.

(G) Exemptions.

(1) *Documents That Should Not Be Filed Electronically.* The following types of documents must not be filed electronically, and will not be scanned into the ECF system by the clerk's office:

(a) sealed documents;

(b) ex parte motions;

(c) documents generated as part of an alternative dispute resolution (ADR) process;

(d) the administrative record in social security and other administrative proceedings;

(e) the state court record in proceedings under 28 U.S.C. § 2254; and

(f) such other types of documents as the clerk may direct in the ECF Administrative Procedures.

(2) *Documents That Need Not Be Filed Electronically.* The following types of documents need not be filed electronically, but may be scanned into the ECF system by the clerk's office:

(a) handwritten pleadings;

(b) documents filed by pro se litigants who are incarcerated or who are not registered ECF users;

(c) indictments, informations, criminal complaints, and the criminal JS45 form;

(d) affidavits for search or arrest warrants and related documents;

(e) documents received from another court under Fed. R. Crim. P. 20 or 40;

(f) appearance bonds;

(g) any document in a criminal case containing the original signature of a defendant, such as a waiver of indictment or a plea agreement;

(h) petitions for violations of supervised release;

(i) executed service of process documents under Rule 4; and

(j) such other types of documents as the clerk may direct in the ECF Administrative Procedures.

Rule 7.1
MOTION PRACTICE

(A) Control of Motion Practice.

(1) Plan for the Disposition of Motions. At the earliest practicable time, the judicial officer shall establish a framework for the disposition of motions, which, at the discretion of the judicial officer, may include specific deadlines or general time guidelines for filing motions. This framework may be amended from time to time by the judicial officer as required by the progress of the case.

(2) Motion Practice. No motion shall be filed unless counsel certify that they have conferred and have attempted in good faith to resolve or narrow the issue.

(3) Unresolved Motions. The court shall rule on motions as soon as practicable, having in mind the reporting requirements set forth in the Civil Justice Reform Act.

(B) Submission of Motion and Opposition to Motion.

(1) Submission of Motion. A party filing a motion shall at the same time file a memorandum of reasons, including citation of supporting authorities, why the motion should be granted. Affidavits and other documents setting forth or evidencing facts on which the motion is based shall be filed with the motion.

(2) Submission of Opposition to a Motion. A party opposing a motion, shall file an opposition to the motion within fourteen (14) days after service of the motion, unless another period is fixed by rule or statute, or by order of the court, and in the same (rather than a separate), document a memorandum of reasons, including citation of supporting authorities, why the motion should not be granted. Affidavits and other documents setting forth or evidencing facts on which the opposition is based shall be filed with the opposition. The fourteen day period is intended to include the period specified by the civil rules for mailing time and provide for a uniform period regardless of the use of the mails.

(3) Additional Papers. All other papers not filed as indicated in subsections (B)(1) and (2), whether in the form of a reply brief or otherwise, may be submitted only with leave of court.

(4) Length of Memoranda. Memoranda supporting or opposing allowance of motions shall not, without leave of court, exceed twenty (20) pages, double-spaced.

(C) Service. All papers filed pursuant to section (B) shall be served unless the moving party indicates in writing on the face of the motion that *ex parte* consideration is requested. Motions filed "ex parte" and related papers need not be served until the motion has been ruled upon or the court orders that service be made.

(D) Request for Hearing. Any party making or opposing a motion who believes that oral argument may assist the court and wishes to be heard shall include a request for oral argument in a separate paragraph of the motion or opposition. The request should be set off with a centered caption, "**REQUEST FOR ORAL ARGUMENT.**"

(E) Hearing. If the court concludes that there should be a hearing on a motion, the motion will be set down for hearing at such time as the court determines.

(F) Decision of Motion Without Hearing. Motions that are not set down for hearing as provided in subsection (E) will be decided on the papers submitted after an opposition to the motion has been filed, or, if no opposition is filed, after the time for filing an opposition has elapsed.

Rule 7.2
IMPOUNDED AND CONFIDENTIAL MATERIALS

(a) Whenever a party files a motion to impound, the motion shall contain a statement of the earliest date on which the impounding order may be lifted, or a statement, supported by good cause, that the material should be impounded until further order of the court. The motion shall contain suggested custody arrangements for the post-impoundment period.

(b) The clerk shall attach a copy of the order to the envelope or other container holding the impounded material.

(c) If the impoundment order provides a cut-off date but no arrangements for custody, the clerk (without further notice to the court or the parties) shall place the material in the public information file upon expiration of the impoundment period. If the order provides for post-impoundment custody by counsel or the parties, the materials must be retrieved immediately upon expiration of the order, or the clerk (without further notice to the court or the parties) shall place the material in the public file.

(d) Motions for impoundment must be filed and ruled upon prior to submission of the actual material sought to be impounded, unless the court orders otherwise.

(e) The court will not enter blanket orders that counsel for a party may at any time file material with the clerk, marked confidential, with instructions that the clerk withhold the material from public inspection. A motion for impoundment must be presented each time a document or group of documents is to be filed.

Rule 7.3
CORPORATE DISCLOSURE STATEMENT

(A) A nongovernmental corporate party to a civil action or proceeding in this court must file a statement identifying any parent corporation and any publicly held company that owns 10% or more of the party's stock.

(B) A party must file the Local Rule 7.3(A) statement upon its first appearance, pleading, petition, motion, response, or other request addressed to the court and must promptly supplement the statement upon any change in the information that the statement requires.

Rule 15.1
ADDITION OF NEW PARTIES

(A) Amendments Adding Parties. Amendments adding parties shall be sought as soon as an attorney reasonably can be expected to have become aware of the identity of the proposed new party.

(B) Service on New Party. A party moving to amend a pleading to add a new party shall serve the motion to amend upon the proposed new party at least ten [(10)] days in advance of filing the motion, together with a separate document stating the date on which the motion will be filed. A motion to amend a pleading to add a new party shall be accompanied by a certificate stating that it has been served in advance on the new party as required by this rule.

Rule 16.1
EARLY ASSESSMENT OF CASES

(A) Scheduling Conference in Civil Cases. In every civil action, except in categories of actions exempted by LR 16.2 as inappropriate for scheduling procedures, the judge or, in the interests of the efficient administration of justice, a designated magistrate judge shall convene a scheduling conference as soon as practicable, but in any event within ninety (90) days after the appearance of a defendant and within one hundred twenty (120) days after the complaint has been served on a defendant. In cases removed to this court from a state court or transferred from any other federal court, the judge or designated magistrate judge shall convene a scheduling conference within sixty (60) days after removal or transfer.

(B) Obligation of Counsel to Confer. Unless otherwise ordered by the judge, counsel for the parties must, pursuant to Fed.R.Civ.P. 26(f), confer at least 21 days before the date for the scheduling conference for the purpose of:

(1) preparing an agenda of matters to be discussed at the scheduling conference,

(2) preparing a proposed pretrial schedule for the case that includes a plan for discovery, and

(3) considering whether they will consent to trial by magistrate judge.

(C) Settlement Proposals. Unless otherwise ordered by the judge, the plaintiff shall present written settlement proposals to all defendants no later than ten (10) days before the date for the scheduling conference. Defense counsel shall have conferred with their clients on the subject of settlement before the scheduling conference and be prepared to respond to the proposals at the scheduling conference.

(D) Joint Statement. Unless otherwise ordered by the judge, the parties are required to file, no later than five (5) business days before the scheduling conference and after consideration of the topics contemplated by Fed.R.Civ.P. 16(b) & (c) and 26(f), a joint statement containing a proposed pretrial schedule, which shall include:

(1) a joint discovery plan scheduling the time and length for all discovery events, that shall

(a) conform to the obligation to limit discovery set forth in Fed. R. Civ. P. 26(b), and

(b) take into account the desirability of conducting phased discovery in which the first phase is limited to developing information needed for a realistic assessment of the case and, if the case does not terminate, the second phase is directed at information needed to prepare for trial; and

(2) a proposed schedule for the filing of motions; and

(3) certifications signed by counsel and by an authorized representative of each party affirming that each party and that party's counsel have conferred:

(a) with a view to establishing a budget for the costs of conducting the full course—and various alternative courses—of the litigation; and

(b) to consider the resolution of the litigation through the use of alternative dispute resolution programs such as those outlined in LR 16.4.

To the extent that all parties are able to reach agreement on a proposed pretrial schedule, they shall so indicate. To the extent that the parties differ on what the pretrial schedule should be, they shall set forth separately the items on which they differ and indicate the nature of that difference. The purpose of the parties' proposed pretrial schedule or schedules shall be to advise the judge of the parties' best estimates of the amounts of time they will need to accomplish specified pretrial steps. The parties' proposed agenda for the scheduling conference, and their proposed pretrial schedule or schedules, shall be considered by the judge as advisory only.

(E) Conduct of Scheduling Conference. At or following the scheduling conference, the judge shall make an early determination of whether the case is "complex" or otherwise appropriate for careful and deliberate monitoring in an individualized and case-specific manner. The judge shall consider assigning any case so categorized to a case management conference or series of conferences under LR 16.3. The factors to be considered by the judge in making this decision include:

(1) the complexity of the case (the number of parties, claims, and defenses raised, the legal difficulty of the issues presented, and the factual difficulty of the subject matter);

(2) the amount of time reasonably needed by the litigants and their attorneys to prepare the case for trial;

(3) the judicial and other resources required and available for the preparation and disposition of the case;

(4) whether the case belongs to those categories of cases that:

(a) involve little or no discovery,

(b) ordinarily require little or no additional judicial intervention, or

(c) generally fall into identifiable and easily managed patterns;

(5) the extent to which individualized and case-specific treatment will promote the goal of reducing cost and delay in civil litigation; and

(6) whether the public interest requires that the case receive intense judicial attention.

In other respects, the scheduling conference shall be conducted accor-

ding to the provisions for a pretrial conference under Federal Rule of Civil Procedure 16 and for a case management conference under LR 16.3.

(F) Scheduling Orders. Following the conference, the judge shall enter a scheduling order that will govern the pretrial phase of the case. Unless the judge determines otherwise, the scheduling order shall include specific deadlines or general time frameworks for:

(1) amendments to the pleadings;

(2) service of, and compliance with, written discovery requests;

(3) the completion of depositions, including, if applicable, the terms for taking and using videotape depositions;

(4) the identification of trial experts;

(5) the sequence of disclosure of information regarding experts contemplated by Fed. R. Civ. P. 26(b);

(6) the filing of motions;

(7) a settlement conference, to be attended by trial counsel and, in the discretion of the judge, their clients;

(8) one or more case management conferences and/or the final pretrial conference;

(9) a final pretrial conference, which shall occur within eighteen months after the filing of the complaint;

(10) the joinder of any additional parties;

(11) any other procedural matter that the judge determines is appropriate for the fair and efficient management of the litigation.

(G) Modification of Scheduling Order. The scheduling order shall specify that its provisions, including any deadlines, having been established with the participation of all parties, can be modified only by order of the judge, or the magistrate judge if so authorized by the judge, and only upon a showing of good cause supported by affidavits, other evidentiary materials, or references to pertinent portions of the record.

(H) Definition of Judge. As used in this rule, 'judge' refers to the United States District Judge to whom the case is assigned or to the United States Magistrate Judge who has been assigned the case pursuant to 28 U.S.C. § 636(c), if the Magistrate Judge has been assigned the case prior to the convening of the scheduling conference mandated by this rule.

Rule 16.2
EXEMPTIONS FROM FED. R. CIV. P. 16(b)

Pursuant to Rule 16(b), Federal Rules of Civil Procedure, as amended, the following categories of actions (based upon the numbered "Nature of Suit" list on form JS 44) are exempted in this district from the scheduling and planning provisions of Rule 16(b), Federal Rules of Civil Procedure, as inappropriate actions for such scheduling and planning:

CONTRACT
- 150 Recovery of Overpayment & Enforcement of Judgment
- 152 Recovery of Defaulted Student Loans
- 153 Recovery of Overpayment of Veterans Benefits

REAL PROPERTY
- 210 Condemnation
- 220 Foreclosure
- 230 Rent Lease & Ejectment
- 245 Asbestos Cases Only

PRISONER PETITIONS
- 510 Vacate Sentence (2255)
- 530 Habeas Corpus
- 540 Mandamus & Other
- 535 Death Penalty
- 550 Other

FORFEITURE/PENALTY
- 610 Agriculture
- 620 Food & Drug
- 625 Drug Related Seizure
- 630 Liquor Laws
- 640 R.R. & Truck
- 650 Airline Regs.

BANKRUPTCY
- 422 Appeal (22 U.S.C. 158)
- 423 Withdrawal (28 U.S.C. 157)

SOCIAL SECURITY
- 861 HIA (1395ff)
- 862 Black Lung (923)
- 863 DIWC (405(g))
- 863 DIWW (405(g))
- 864 SSID Title XVI
- 865 RSI (405(g))

TAX SUITS
- 871 IRS-Third Party (26 U.S.C. 7609)

OTHER STATUTES
- 400 State Reapportionment
- 450 Interstate Freight Damage Claims Only
- 875 Customer Challenge (12 U.S.C. 3410)
- 900 Appeal of Fee Determination Under Equal Access to Justice Act

Rule 16.3
CASE MANAGEMENT CONFERENCES

(A) Conduct of Case Management Conferences. Case management conferences shall be presided over by a judicial officer who, in furtherance of the scheduling order required by LR 16.1(f) may:

(1) explore the possibility of settlement;

(2) identify or formulate (or order the attorneys to formulate) the principal issues in contention;

(3) prepare (or order the attorneys to prepare) a specific discovery schedule and discovery plan that, if the presiding judicial officer deems appropriate, might:

(a) identify and limit the volume of discovery available in order to avoid unnecessary or unduly burdensome or expensive discovery;

(b) sequence discovery into two or more stages; and

(c) include time limits set for the completion of discovery;

(4) establish deadlines for filing motions and a time framework for their disposition;

(5) provide for the "phased resolution" or "bifurcation of issues for trial" consistent with Federal Rule 42(b); and

(6) explore any other matter that the judicial officer determines is appropriate for the fair and efficient management of the litigation.

(B) Obligation of Counsel to Confer. The judicial officer may require counsel for the parties to confer before the case management conference for the purpose of preparing a joint statement containing:

(1) an agenda of matters that one or more parties believe should be addressed at the conference; and

(2) a report advising the judicial officer whether the case is progressing within the allotted time limits and in accord with the specified pretrial steps.

This statement is to be filed with the court no later than five (5) business days before the case management conference.

(C) Additional Case Management Conferences. Nothing in this rule shall be construed to prevent the convening of additional case management conferences by the judicial officer as may be thought appropriate in the circumstances of the particular case. In any event, a conference should not terminate without the parties being instructed as to when and for what purpose they are to return to the court.

Rule 16.4
ALTERNATIVE DISPUTE RESOLUTION

(A) The judicial officer shall encourage the resolution of disputes by settlement or other alternative dispute resolution programs.

(B) Settlement. At every conference conducted under these rules, the judicial officer shall inquire as to the utility of the parties' conducting settlement negotiations, explore means of facilitating those negotiations, and offer whatever assistance may be appropriate in the circumstances. Assistance may include a reference of the case to another judicial officer for settlement purposes. Whenever a settlement conference is held, a representative of each party who has settlement authority shall attend or be available by telephone.

(C) Other Alternative Dispute Resolution Programs.

(1) Discretion of Judicial Officer. The judicial officer, following an exploration of the matter with all counsel, may refer appropriate cases to alternative dispute resolution programs that have been designated for use in the district court or that the judicial officer may make available. The dispute resolution programs described in subdivisions (2) through (4) are illustrative, not exclusive.

(2) Mini-trial.

(a) The judicial officer may convene a mini-trial upon the agreement of all parties, either by written motion or their oral motion in open court entered upon the record.

(b) Each party, with or without the assistance of counsel, shall present his or her position before:

(1) selected representatives for each party, or

(2) an impartial third party, or

(3) both selected representatives for each party and an impartial

third party.

(c) An impartial third party may issue an advisory opinion regarding the merits of the case.

(d) Unless the parties agree otherwise, the advisory opinion of the impartial third party is not binding.

(e) The impartial third party's advisory opinion is not appealable.

(f) Neither the advisory opinion of an impartial third party nor the presentations of the parties shall be admissible as evidence in any subsequent proceeding, unless otherwise admissible under the rules of evidence. Also, the occurrence of the mini-trial shall not be admissible.

(3) Summary Jury Trial.

(a) The judicial officer may convene a summary jury trial:

(1) with the agreement of all parties, either by written motion or their oral motion in court entered upon the record, or

(2) upon the judicial officer's determination that a summary jury trial would be appropriate, even in the absence of the agreement of all the parties.

(b) There shall be six (6) jurors on the panel, unless the parties agree otherwise.

(c) The panel may issue an advisory opinion regarding:

(1) the respective liability of the parties, or

(2) the damages of the parties, or

(3) both the respective liability and the damages of the parties.

Unless the parties agree otherwise, the advisory opinion is not binding and it shall not be appealable.

(d) Neither the panel's advisory opinion nor its verdict, nor the presentations of the parties shall be admissible as evidence in any subsequent proceeding, unless otherwise admissible under the rules of evidence. Also, the occurrence of the summary jury trial shall not be admissible.

(4) Mediation.

(a) The judicial officer may grant mediation upon the agreement of all parties.

(b) The mediator selected may be an individual, group of individuals or institution. The mediator shall be compensated as agreed by the parties.

(c) The mediator shall meet, either jointly or separately, with each party and counsel for each party and shall take any other steps that may appear appropriate in order to assist the parties to resolve the impasse or controversy.

(d) If mediation does not result in a resolution of the dispute, the parties shall promptly report the termination of mediation to the judicial officer.

(e) If an agreement is reached between the parties on any issues, the mediator shall make appropriate note of that agreement and refer the parties to the judicial officer for entry of a court order.

(f) Any communication related to the subject matter of the dispute made during the mediation by any participant, mediator, or any other person present at the mediation shall be a confidential communication to the full extent contemplated by Fed. R. Evid. 408. No admission, representation, statement, or other confidential communication made in setting up or conducting the proceedings not otherwise discoverable or obtainable shall be admissible as evidence or subject to discovery.

Rule 16.5
FINAL PRETRIAL CONFERENCE

(A) Schedule of Conference. The judicial officer to whom the case is assigned for trial may set a new date for the final pretrial conference if that judicial officer determines that resolution of the case through settlement or some other form of alternative dispute resolution is imminent.

(B) Representation by Counsel; Settlement. Unless excused by the judicial officer to whom the case is assigned for trial, each party shall be represented at the final pretrial conference by counsel who will conduct the trial. Counsel shall have full authority from their clients with respect to settlement and shall be prepared to advise that judicial officer as to the prospects of settlement.

(C) Disclosures Preliminary to the Pretrial Conference. As provided in LR 26.4(A), the disclosure regarding experts required by Fed.R.Civ.P. 26(a)(2) shall be made at least 90 days before the final pretrial conference. No later than 30 days before the date of the pretrial conference the parties shall make the pretrial disclosures required by Fed.R.Civ.P. 26(a)(3). Any objections to the use of the evidence identified in the pretrial disclosure required by Fed.R.Civ.P. 26(a)(3) shall be made before counsel confer regarding the pretrial memorandum, shall be a subject of their conference and shall not be filed with the court unless the objections cannot be resolved. Filing of such objections shall be made pursuant to subsection (D)(12) of this rule.

(D) Obligation of Counsel to Confer and Prepare Pretrial Memorandum. Unless otherwise ordered by the judicial officer to whom the case is assigned for trial, counsel for the parties shall confer no later than fifteen (15) days before the date of the final pretrial conference for the purpose of jointly preparing a pretrial memorandum for submission to the judicial officer. Unless otherwise ordered by the judicial officer to whom the case is assigned for trial, the parties are required to file, no later than five (5) business days prior to the pre-trial conference, a joint pretrial memorandum which shall set forth:

(1) a concise summary of the evidence that will be offered by:

(a) plaintiff;

(b) defendant; and

(c) other parties;

with respect to both liability and damages (including special damages, if any);

(2) the facts established by pleadings or by stipulations or admissions of counsel;

(3) contested issues of fact;

(4) any jurisdictional questions;

(5) any questions raised by pending motions;

(6) issues of law, including evidentiary questions, together with supporting authority;

(7) any requested amendments to the pleadings;

(8) any additional matters to aid in the disposition of the action;

(9) the probable length of the trial;

(10) the names, addresses and telephone numbers of witnesses to be called (expert and others) and whether the testimony of any such witness is intended to be presented by deposition;

(11) the proposed exhibits; and

(12) the parties' respective positions on any remaining objections to the evidence identified in the pretrial disclosure required by Fed.R.Civ.P. 26(a)(3).

(E) Conduct of Conference. The agenda of the final pretrial conference, when possible and appropriate, shall include:

(1) a final and binding definition of the issues to be tried;

(2) the disclosure of expected and potential witnesses and the substance of their testimony;

(3) the exchange of all proposed exhibits;

(4) a pretrial ruling on objections to evidence;

(5) the elimination of unnecessary or redundant proof, including the limitation of expert witnesses;

(6) a consideration of the bifurcation of the issues to be tried;

(7) the establishment of time limits and any other restrictions on the trial;

(8) a consideration of methods for expediting jury selection;

(9) a consideration of means for enhancing jury comprehension and simplifying and expediting the trial;

(10) a consideration of the feasibility of presenting direct testimony by written statement;

(11) the exploration of possible agreement among the parties on various issues and encouragement of a stipulation from the parties, when that will serve the ends of justice, including:

(a) that direct testimony of some or all witnesses will be taken in narrative or affidavit form, with right of cross-examination reserved;

(b) that evidence in affidavit form will be read to the jury by the witnesses, or by counsel or another reader with court approval; and

(c) that time limits shorter than those set forth in Rule 43.1 be used for trial; and

(12) a consideration of any other means to facilitate and expedite trial.

(F) Trial Brief.

A trial brief, including requests for rulings or instructions, shall be filed by each party five (5) calendar days before the commencement of trial. Each party may supplement these requests at the trial if the evidence develops otherwise than as anticipated.

Rule 26.1
CONTROL OF DISCOVERY

(A) Cooperative Discovery. The judicial officer should encourage cost effective discovery by means of voluntary exchange of information among litigants and their attorneys. This may be accomplished through the use of:

(1) informal, cooperative discovery practices in which counsel provide information to opposing counsel without resort to formal discovery procedures; or

(2) stipulations entered into by the parties with respect to deposition notices, waiver of signing, and other matters, except that the parties may not enter into stipulations extending the time for responding to discovery requests or otherwise modify discovery procedures ordered by the judicial officer.

(B) Disclosure Orders. The judicial officer may order the parties to submit at the scheduling conference, or at any subsequent time the officer deems appropriate, sworn statements disclosing certain information to every other party. At the discretion of the judicial officer, this order may direct the submission of:

(1) a sworn statement from a claimant, whether plaintiff, third-party plaintiff, cross-claimant, or counter-claimant, that:

(a) itemizes all economic loss and provides a computation of damages for which recovery is sought, if any, sustained before the date of service of process;

(b) identifies all persons then known to the claimant or the claimant's attorney who witnessed or participated in the transaction or occurrence giving rise to the claim or otherwise known or believed to have substantial discoverable information about the claim or defenses, together with a statement of the subject and a brief summary of that information;

(c) identifies all opposing parties, and all officers, directors, and employees of opposing parties, from whom statements have been obtained by or on behalf of the claimant regarding the subject matter of the claim; and

(d) identifies all governmental agencies or officials then known to the claimant or the claimant's attorney to have investigated the transaction or occurrence giving rise to the claim; and

(2) a sworn statement from a defendant, whether the direct defendant, third-party defendant, cross-claim defendant, or counterclaim defendant, that identifies:

(a) all persons then known to the defendant or the defendant's attorneys who witnessed the transaction or occurrence giving rise to the claim or otherwise is known or believed to have substantial discoverable information about the claims or defenses, together with a statement of the subject and a brief summary of that information;

(b) all opposing parties, and all officers, directors, and employees of opposing parties, from whom statements have been obtained by or on behalf of the defendant regarding the subject matter of the claims or defenses; and

(c) all government agencies or officials then known to the defendant or the defendant's attorneys to have investigated the transaction or occurrence giving rise to the claims or defenses.

Noncompliance may be excused only by order of the judicial officer.

(C) Discovery Event Limitations. Unless the judicial officer orders otherwise, the number of discovery events shall be limited for each side (or group of parties with a common interest) to ten (10) depositions, twenty-five (25) interrogatories, twenty-five (25) requests for admissions, and two (2) separate sets of requests for production. For purposes of determining the number of interrogatories propounded, subparts of a basic interrogatory which are logical extensions of the basic interrogatory and seek only to obtain specified additional particularized information with respect to the basic interrogatory shall not be counted separately from the basic interrogatory.

Rule 26.2
SEQUENCES OF DISCOVERY

(A) Automatic Required Disclosure. Unless otherwise ordered by the judge, or by the United States Magistrate Judge who has been assigned the case pursuant to 28 U.S.C. § 636(c), disclosure required by Fed.R.Civ.P. 26(a)(1) should be made as soon as practicable and in any event must be made at or within 14 days after the meeting required by Fed.R.Civ.P. 26(f) and LR 16.1(B). Unless otherwise ordered by such a judicial officer, before a party may initiate discovery, that party must provide to other parties disclosure of the information and materials called for by Fed.R.Civ.P. 26(a)(1).

(B) Further Discovery. Should a party exhaust the opportunities for any type of discovery events under LR 26.1(C), any requests that such party may make for additional interrogatories, depositions, admissions or the production of documents beyond that allowed pursuant to LR 26.1(C) shall be by discovery motion. All requests for additional discovery events, extensions of deadlines, for the completion of discovery or for postponement of the trial must be signed by the attorney and the party making the request.

(C) Certification of Discovery Motions. The judicial officer shall not consider any discovery motion that is not accompanied by a certification, as required by LR 7.1(A)(2) and LR 37.1(B), that the moving party has made a reasonable and good-faith effort to reach agreement with opposing counsel on the matters set forth in the motion. In evaluating any discovery motion, the judicial officer may consider the desirability of conducting phased discovery, as contemplated by LR 26.3.

(D) Removed and Transferred Actions. In all actions removed to this court or transferred to this court from another federal court, the submission required by subdivision (A) shall be made as prescribed in that subdivision, and if discovery was initiated before the action being removed or transferred to this court, then the submission required by subdivision (A) shall be made within twenty (20) days of the date of removal or transfer.

Rule 26.3
PHASING OF DISCOVERY

In order to facilitate settlement and the efficient completion of discovery, the judicial officer has discretion to structure discovery activities by phasing and sequencing the topics which are the subject of discovery. For example, an order may be framed limiting the first phase to developing information needed for a realistic assessment of the case. If the case does not terminate, the second phase would be directed at information needed to prepare for trial.

Rule 26.4
SPECIAL PROCEDURES FOR HANDLING EXPERTS

(**A) Objections to Expert Witnesses.** Unless otherwise directed by the judicial officer, the disclosure regarding experts required by Fed.R.Civ.P. 26(a)(2) shall be made at least 90 days before the final pretrial conference. A party who intends to object to the qualifications of an expert witness, or to the introduction of any proposed exhibit related to that expert's testimony, shall give written notice of the grounds of objection, together with supporting authority, to all other parties no later than the time for such objections provided in LR 16.5(c).

(B) Setting Terms and Conditions. At the final pretrial conference, the judge shall consider:

(1) precluding the appearance of expert witnesses not timely identified;

(2) precluding use of any trial testimony by an expert at variance with any written statement or any deposition testimony;

(3) making a ruling concerning the use of expert depositions, including videotaped depositions at trial; and

(4) making any other ruling on the admissibility of expert testimony at the trial.

Rule 26.5
UNIFORM DEFINITIONS IN DISCOVERY REQUESTS

(A) Incorporation by Reference and Limitations. The full text of the definitions set forth in paragraph (C) is deemed incorporated by reference into all discovery requests, but shall not preclude

(1) the definition of other terms specific to the particular litigation;

(2) the use of abbreviations; or

(3) a narrower definition of a term defined in paragraph (C).

(B) Effect on Scope of Discovery. This rule is not intended to broaden or narrow the scope of discovery permitted by the Federal Rules of Civil Procedure.

(C) Definitions. The following definitions apply to all discovery requests:

(1) Communication. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

(2) Document. The term "document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Fed. R. Civ. P. 34(a). A draft or non-identical copy is a separate document within the meaning of this term.

(3) Identify (With Respect to Persons). When referring to a person, "to identify" means to give, to the extent known, the person's full name, present or last known address, and, when referring to a natural person, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(4) Identify (With Respect to Documents). When referring to documents, "to identify" means to give, to the extent known, the
(a) type of document;
(b) general subject matter;
(c) date of the document; and
(d) author(s), addressee(s), and recipient(s).
(5) Parties. The terms "plaintiff" and "defendant" as well as a party's full or abbreviated name or a pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries, or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.
(6) Person. The term "person" is defined as any natural person or any business, legal, or governmental entity or association.
(7) Concerning. The term "concerning" means referring to, describing, evidencing, or constituting.
(8) State the Basis. When an interrogatory calls upon a party to "state the basis" of or for a particular claim, assertion, allegation, or contention, the party shall
(a) identify each and every document (and, where pertinent, the section, article, or subparagraph thereof), which forms any part of the source of the party's information regarding the alleged facts or legal conclusions referred to by the interrogatory;
(b) identify each and every communication which forms any part of the source of the party's information regarding the alleged facts or legal conclusions referred to by the interrogatory;
(c) state separately the acts or omissions to act on the part of any person (identifying the acts or omissions to act by stating their nature, time, and place and identifying the persons involved) which form any part of the party's information regarding the alleged facts or legal conclusions referred to in the interrogatory; and
(d) state separately any other fact which forms the basis of the party's information regarding the alleged facts or conclusions referred to in the interrogatory.

Rule 26.6
COURT FILINGS AND COSTS

(A) Nonfiling of Discovery Materials. Automatic or voluntary disclosure material, depositions upon oral examinations and notices thereof,depositions upon written questions, interrogatories, requests for documents, requests for admissions, answers and responses thereto, and any other requests for or products of the discovery process shall not be filed unless so ordered by the court or for use in the proceeding. The party taking a deposition or obtaining any material through discovery is responsible for its preservation and delivery to the court if needed or so ordered. If for any reason a party or concerned citizen believes that any of the named documents should be filed, an *ex parte* request may be made that such document be filed, stating the reasons therefor. The court may also order filing *sua sponte*. If relief is sought under Fed. R. Civ. P. 26(c) or 37, copies of the relevant portions of disputed documents shall be filed with the court contemporaneously with any motion. If the moving party under Fed. R. Civ. P. 56 or the opponent relies on discovery documents, copies of the pertinent parts thereof shall be filed with the motion or opposition.
(B) Copying Expense for Discovery Materials.
(1) Inspection of Documents. Except as otherwise provided in an order entered pursuant to Fed. R. Civ. P. 26(c), all parties to an action shall be entitled to inspect documents produced by another party pursuant to Fed. R. Civ. P. 33(c) or 34 at the location where they are produced.
(2) Copies of Documents. Except as otherwise provided in an order entered pursuant to Fed. R. Civ. P. 26(c), upon request of any party, and upon that party's agreement to pay the copying costs at the time of delivery, a party who produces documents pursuant to Fed. R. Civ. P. 33(c) or 34 shall provide copies of all or any specified part of the documents. No party shall be entitled to obtain copies of documents produced by another party pursuant to Fed. R. Civ. P. 33(c) or 34 without paying the costs thereof.

Rule 30.1
PLACE FOR TAKING DEPOSITIONS

For purposes of Rule 45(d)(2), Federal Rules of Civil Procedure, without further order of the court,
(a) Boston shall be deemed a convenient place for taking of a deposition of any person who resides, is employed, or transacts business in person in any of the following counties: Suffolk, Bristol, Essex, Middlesex, Norfolk, Plymouth and Worcester.
(b) Springfield shall be deemed a convenient place for taking of a deposition of any person who resides, is employed, or transacts business in person in any of the following counties: Berkshire, Franklin, Hampden and Hampshire.

Rule 30.2
OPENING OF DEPOSITIONS

(a) If filed, unless the court directs otherwise, depositions taken pursuant to Rule 26, Federal Rules of Civil Procedure, in a pending action shall be opened by the clerk and made available for inspection and copying on request of any party or counsel for any party to the proceeding.
(b) Depositions before action or pending appeal taken pursuant to Rule 27, Federal Rules of Civil Procedure, shall be opened by the clerk and made available for inspection and copying on request of any person served with notice pursuant to subsection (a)(2) of that rule, or by counsel for such person.

Rule 33.1
INTERROGATORIES

(A) Form of Response.
(1) Answers and objections in response to interrogatories, served pursuant to Fed. R. Civ. P. 33 shall be made in the order of the interrogatories propounded.
(2) Each answer, statement, or objection shall be preceded by the interrogatory to which it responds.
(3) Each objection and the grounds therefor shall be stated separately.
(B) Reference to Records. Whenever a party answers any interrogatory by reference to records from which the answer may be derived or ascertained, as permitted in Federal Rule of Civil Procedure 33(c):
(1) the specification of documents to be produced shall be in sufficient detail to permit the interrogating party to locate and identify the records and to ascertain the answer as readily as could the party from whom discovery is sought;
(2) the producing party shall make available any computerized information or summaries thereof that it either has, or can adduce by a relatively simple procedure, unless these materials are privileged or otherwise immune from discovery;
(3) the producing party shall provide any relevant compilations, abstracts, or summaries in its custody or readily obtainable by it, unless these materials are privileged or otherwise immune from discovery; and
(4) the documents shall be made available for inspection and copying within fourteen (14) days after service of the answers to interrogatories or at a date agreed upon by the parties.
(C) Objections to Interrogatories.
(1) When an objection is made to any interrogatory, or sub-part thereof, it shall state with specificity all grounds upon which the objecting party relies. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, shall be deemed waived.
(2) No part of an interrogatory shall be left unanswered merely because an objection is interposed to another part of the interrogatory.
(D) Answers to Interrogatories Following Objections. Answers to interrogatories with respect to which objections were served and which are subsequently required to be answered shall be served within fourteen (14) days after it is determined that they should be answered, unless the court directs otherwise.
(E) Claims of Privilege. When a claim of privilege is asserted in objection to any interrogatory, or any sub-part thereof, and an answer is not provided on the basis of that assertion, the attorney asserting the privilege shall identify in the objection the nature of the privilege that is being claimed. If the privilege is being asserted in connection with a claim or defense governed by state law, the attorney asserting the privilege shall indicate the particular privilege rule that is being invoked.

Rule 34.1
DOCUMENT PRODUCTION

(A) Form of Response.
(1) Answers and objections in response to requests for document

production, served pursuant to Fed. R. Civ. P. 34 shall be made in the order of the requests propounded.

(2) Each answer, statement, or objection shall be preceded by the request to which it responds.

(3) Each objection and the grounds therefor shall be stated separately.

(B) [Reserved]

(C) Objections to Document Request.

(1) When an objection is made to any document request, or sub-part thereof, it shall state with specificity all grounds upon which the objecting party relies. Any ground not stated in an objection within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, shall be deemed waived.

(2) No part of a document request shall be left unanswered merely because an objection is interposed to another part of the document request.

(D) Answers to Document Request Following Objections. Answers to a document request with respect to which objections were served and which are subsequently required to be answered shall be served within fourteen (14) days after it is determined that they should be answered, unless the court directs otherwise.

(E) Claims of Privilege. When a claim of privilege is asserted in objection to any document request, or any sub-part thereof, and any document is not provided on the basis of that assertion, the attorney asserting the privilege shall identify in the objection the nature of the privilege that is being claimed with respect to each such document. If the privilege is being asserted in connection with a claim or defense governed by state law, the attorney asserting the privilege shall indicate the particular privilege rule that is being invoked.

Rule 35.1
DISCLOSURE OF MEDICAL INFORMATION IN PERSONAL INJURY CASES

(A) Disclosure by Claimants. Fourteen (14) days after an issue is joined by a responsive pleading, a claimant, whether plaintiff, third-party plaintiff, cross-claimant, or counter-claimant, who asserts a claim for personal injuries shall serve defendant, whether the direct defendant, third-party defendant, cross-claim defendant, or counterclaim defendant with

(1) an itemization of all medical expenses incurred before the date of service of the pleading containing the claim for which recovery is sought. If the claimant anticipates that recovery will be sought for future medical expenses, the itemization shall so state, but need not set forth an amount for the anticipated future medical expenses;

(2) a statement that either:

(a) identifies a reasonably convenient location and date, within no more than fourteen (14) days, at which the defendant may inspect and copy, at the defendant's expense, all non-privileged medical records pertaining to the diagnosis, care, or treatment of injuries for which recovery is sought; or

(b) identifies all health care providers from which the claimant has received diagnosis, care, or treatment of injuries for which recovery is sought together with executed releases directed at each provider authorizing disclosure to the defendant or its counsel of all non-privileged medical records in the provider's possession.

(B) Assertion of Privilege. Insofar as medical records are not produced in accordance with subdivision (a)(2) on the ground of privilege, the claimant shall identify the privileged documents and state the privilege pursuant to which they are withheld.

(C) Removed and Transferred Actions. In all actions removed to this court from a state court or transferred to this court from another federal court, claimants seeking recovery for personal injuries shall provide the information and materials described in subdivision (A) within twenty (20) days after the date of removal or transfer.

Rule 36.1
ADMISSIONS

(A) Requests for Admission—Form of Response.

(1) Statements and objections in response to requests for admission served pursuant to Fed. R. Civ. P. 36 shall be made in the order of the requests for admission propounded.

(2) Each answer, statement, or objection shall be preceded by the request for admission to which it responds.

(3) Each objection and the grounds therefor shall be stated separately.

(B) Statements in Response to Requests for Admission Following Objections. When there is objection to a request for admission and it is subsequently determined that the request is proper, the matter, the admission of which is requested, shall be deemed admitted unless within fifteen (15) days after such determination such party to whom the request was directed serves a statement denying the matter or setting forth the reasons why that party cannot admit or deny the matter, as provided in Fed. R. Civ. P. 36.

Rule 37.1
DISCOVERY DISPUTES

(A) Before filing any discovery motion, including any motion for sanctions or for a protective order, counsel for each of the parties shall confer in good faith to narrow the areas of disagreement to the greatest possible extent. It shall be the responsibility of counsel for the moving party to arrange for the conference. Conferences may be conducted over the telephone. Failure of opposing counsel to respond to a request for a discovery conference within seven (7) days of the request shall be grounds for sanctions, which may include automatic allowance of the motion.

(B) If (I) opposing counsel has failed to respond to a request for a discovery conference within the seven day period set forth in subdivision (A), (II) opposing counsel has failed to attend a discovery conference within fourteen (14) calendar days of the request, or (III) if disputed issues are not resolved at the discovery conference, a dissatisfied party may file a motion and supporting memorandum. The motion shall include a certificate in the margin of the last page that the provisions of this rule have been complied with. The memorandum shall state with particularity the following:

(1) If a discovery conference was not held, the reasons why it was not;

(2) If a discovery conference was held, the time, date, location and duration of the conference; who was present for each party; the matters on which the parties reached agreement; and the issues remaining to be decided by the court;

(3) The nature of the case and the facts relevant to the discovery matters to be decided;

(4) Each interrogatory, deposition question, request for production, request for admission or other discovery matter raising an issue to be decided by the court, and the response thereto; and

(5) A statement of the moving party's position as to each contested issue, with supporting legal authority, which statement shall be set forth separately immediately following each contested item.

(C) The opposing party may respond to the memorandum within fourteen (14) calendar days after service thereof. The response, if any, shall conform to the requirements of subdivision (B)(5) of this Rule.

Rule 40.1
ASSIGNMENT OF CASES

(A) Civil Cases.

(1) *Categories of Cases.* All civil cases shall be divided into the following five categories for purposes of assignment, based upon the numbered Nature of the Suit listed in the civil cover sheet used by the clerk in initiating the civil docket:

I — 160, 410, 470, 535, R.23, regardless of nature of suit;

II — 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950;

III — 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891;

IV — 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900; and

V — 150, 152, 153.

A copy of the civil cover sheet form referred to is attached as an appendix to this rule.

(2) *Designation of Nature of Suit.* The party filing the initial pleading shall complete a civil cover sheet, Form JS 44, or any successor forms, and file it with the initial pleading. If the clerk should determine that the designation of Nature of Suit is in error, the clerk shall correctly classify the suit and notify the party filing the initial pleading. A designation shall not thereafter be changed except by order of the Chief Judge or the judge to whom the case is assigned.

(3) *Assignment.* The clerk shall place a case in one of the five categories described in subsection (A)(1) and, unless otherwise ordered by the Court, assign it by lot among the judges of the court in active ser-

vice at their respective duty stations in accordance with this rule in such manner that each such judge shall be assigned as nearly as possible the same number of cases in each category. A senior judge may limit the category of case and nature of suit assigned to that judge and, within the categories of cases or suits that senior judge will accept, assignment shall be by lot in accordance with this rule.

(B) Criminal Cases.

(1) *Categories of Cases.* All criminal cases shall be divided into the following three categories:

I — Felony cases expected to require a combined total of fifteen (15) days or more for pretrial hearings and trial before a district judge;

II — All other felony cases; and

III — All misdemeanor and petty offense cases where a district judge has been requested; Rule 20 cases; cases involving waivers of indictment; and all matters involving alleged violations of conditions of release by persons transferred to this District for supervision.

(2) *Designation of Category.* The attorney for the United States shall identify the appropriate category on Form JS 45, as modified for the District of Massachusetts, or any successor form, and submit the form contemporaneously with the document that initiates the case. If the clerk should determine that the designation of category is in error, the clerk shall correctly classify the case and notify the attorney for the United States. The designation shall not thereafter be changed except by order of the Chief Judge or the judge to whom the case is assigned.

(3) *Assignment.* The clerk shall place a case in one of the three categories described in subsection (B)(1) and, unless otherwise ordered by the Court, assign it by lot among the judges of the court in active service at their respective active duty stations within the divisions of the court in accordance with this rule in such manner that each judge shall be assigned as nearly as possible the same number of cases in each category. A senior judge may limit the category of cases or types of alleged criminal offenses assigned to that judge and within the categories of cases or offenses that senior judge will accept, assignment shall be in accordance with this rule.

(C) Designation of Divisions.

The District of Massachusetts constitutes one judicial district comprising three divisions.

(1) *Eastern Division*

The Eastern Division of the District of Massachusetts comprises the counties of Barnstable, Bristol, Dukes, Essex, Middlesex, Nantucket, Norfolk, Plymouth, and Suffolk. Cases assigned to the Eastern Division and all pleadings and documents therein shall be filed in the clerk's office in Boston.

(2) *Central Division*

The Central Division of the District of Massachusetts is Worcester County. Cases assigned to the Central Division and all pleadings and documents therein shall be filed in the clerk's office in Worcester.

(3) *Western Division*

The Western Division of the District of Massachusetts comprises the counties of Berkshire, Franklin, Hampden and Hampshire. Cases shall be assigned to the Western Division and all pleadings and documents therein shall be filed at the clerk's office in Springfield.

(D) Assignment of Civil Cases.

(1) Civil cases shall be assigned to the respective divisions if:

(a) All of the parties reside in that division.

(b) All of the parties reside in the District of Massachusetts and the majority of the plaintiff(s) reside(s) in that division.

(c) The only parties residing in the District of Massachusetts reside in that division; or

(d) Any of the parties are the United States, the Commonwealth of Massachusetts, or any governmental agency of either the United States or the Commonwealth of Massachusetts and a majority of all other parties resident in the District of Massachusetts reside in that division.

(2) Except as otherwise ordered by the Court, cases not governed by section (D)(1) may be filed, subject to reassignment and transfer, in the division chosen by the plaintiff.

(E) Assignment of Criminal Cases. Criminal cases shall be assigned to that division in which the most significant criminal conduct related to the alleged violations occurred within the District of Massachusetts. All documents in each criminal case shall be filed in the clerk's office administering cases for the division to which that case is assigned.

(F) Transfer between Divisions. Any case may be transferred from one division to another division on motion of any party for good cause shown or sua sponte for good cause by the judge to whom the case is assigned.

(G) Related Civil Cases.

(1) For purposes of this rule, a civil case is related to one previously filed in this court if some or all of the parties are the same, and if one or more of the following similarities exist also: the cases involve the same or similar claims or defenses; or the cases involve the same property, transaction or event; or the cases involve insurance coverage for the same property, transaction or event; or the cases involve substantially the same questions of fact and law. In addition, two cases, one criminal and one civil, are related if the civil case involves forfeiture of property from a transaction or event which is the subject of a previously filed criminal case, or the civil case seeks enforcement of a restitution order or fine imposed in a previously filed criminal case. This rule shall not apply if more than two (2) years have elapsed since the closing of the previous action.

(2) If the party filing the initial pleading believes that the case is related to a case already assigned, whether or not the case is then pending, that party shall notify the clerk by notation on the local civil category sheet indicating the title and number of each such earlier case.

(3) The clerk shall assign related cases to the same judge without regard to the number of other cases in that category previously assigned to that judge. Related cases shall be counted as cases assigned, except as the Chief Judge may otherwise direct.

(4) The assignment of cases as related by the clerk shall be subject to correction only by the judge to whom they have been assigned, who shall return cases erroneously assigned on that basis to the clerk for reassignment.

(5) The treatment of a case as not related to another case shall be subject to correction only by the joint decision of the judge to whom it has been assigned and the judge to whom it should be assigned, if related to another case. The judges may then transfer the case pursuant to section (I) of this rule, and shall notify the clerk of the reason for the transfer.

(H) Proceedings after assignment. Unless otherwise ordered by the court, all proceedings in a case after its assignment shall be conducted before the judge to whom it has been assigned, except as otherwise provided in these rules. This section does not preclude reassignment of cases by the court or the clerk, at the direction of the court, without prior notice to the parties.

(I) Reassignment and Transfer of Cases. In the interest of justice or to further the efficient performance of the business of the court, a judge may return a case to the clerk for reassignment, whether or not the case is related to any other case, with the approval of the Chief Judge, or, with respect to civil cases only, may transfer the case to another judge, if the other judge consents to the transfer.

(J) Motion for consolidation of cases. A motion for consolidation of two or more cases shall be made in the case first filed in this court.

(K) Proceedings after appeal.

(1) When an appellate court remands a case to this court for a new trial, the case shall be reassigned to a judge other than the judge before whom the first trial was held.

(2) In all other cases in which the mandate of the appellate court requires further proceedings in this court, such proceedings shall not be conducted before the judge before whom the prior proceedings were conducted unless the terms of the remand require that further proceedings be conducted before the original judge or unless the judge determines that there will result a substantial saving in the time of the whole court and that there is no reason why, in the interest of justice, further proceedings should be conducted before another judge. If the judge before whom the prior proceedings were conducted does not retain the case for further proceedings, that judge shall return it to the clerk for reassignment.

Rule 40.2
CONFLICT OF COURT APPEARANCES

(A) Order of Preference and Notice to Clerks. In situations where counsel, including Assistant United States Attorneys, have conflicting court appearances among cases pending before different judges or magistrates of this court, the following order of preference shall apply, except as otherwise provided by law:

(1) Trials shall take precedence over all other hearings, and jury trials shall take precedence over nonjury trials.

(2) Criminal cases shall take precedence over civil cases.

(3) Criminal cases involving defendants who are in custody pending trial in the particular case shall take precedence over other criminal cases.

(4) Among civil cases or among criminal cases not involving defen-

dants in custody, the case having the earliest docket number shall take precedence over the others.

When such conflicts appear, the counsel involved shall notify the deputy clerk assigned to each judge concerned, in writing, not later than three (3) days after the receipt of the notice or calendar giving rise to such conflict. The notice shall contain the names and docket numbers of each case, the time of the scheduled hearings in each case, the purpose thereof and advise which case has precedence and the reason therefor. Upon receipt of such notice and a determination that a conflict in fact exists, the case or cases not having precedence shall be rescheduled.

(B) Substitution of Counsel. Counsel, in lieu of giving a notice of conflict, may elect to have a colleague, including another Assistant United States Attorney, handle the matter for the counsel involved. This shall not apply to any appointed defense counsel in the trial of criminal cases, unless the judicial officer orders otherwise.

(C) Primacy of Speedy Trial Plan. In the event of any conflict between the provisions of this rule and the provisions of the Speedy Trial Plan for the District of Massachusetts, the Speedy Trial Plan shall control.

(D) Scheduling Policy Regarding Superior Court Cases. When counsel have engagement conflicts with respect to cases pending in the Massachusetts Superior Court and The United States District Court for the District of Massachusetts, the following scheduling policy shall apply:

(1) Trials shall take precedence over all other hearings.

(2) Jury trials shall take precedence over nonjury trials.

(3) Criminal cases shall take precedence over civil cases.

(4) Criminal cases involving defendants who are in custody pending trial shall take precedence over other criminal cases.

(5) Among civil cases, or among criminal cases not involving defendants in custody, the case having the earliest docket number shall take precedence over the others, except that a trial setting involving numerous parties and counsel will ordinarily take precedence over other trials.

Counsel shall notify the presiding Superior Court Justice and U.S. District Judge of the scheduling conflict, in writing, not later than three (3) days after the receipt of the scheduling order giving rise to the conflict. Counsel's notification shall include: a) the names and docket numbers of each case, b) the date and time of the scheduled proceedings in each case, and c) a brief statement as to which case has precedence under this policy. The case or cases not having precedence shall be rescheduled, unless the presiding Justice and Judge agree otherwise. In the event of any conflict between the provisions of this policy and the provisions of the Speedy Trial Plan for the United States District of Massachusetts, the Speedy Trial Plan shall have precedence.

Rule 40.3
CONTINUANCES

(A) A motion for the continuance of a trial, evidentiary hearing, or any other proceeding, will be granted only for good cause.

(B) Motions to continue discovery and pretrial conferences will not be entertained unless the date and time of the pretrial conference are set out in the motion as well as a statement of how many other requests, if any, for continuances have been sought and granted.

(C) Illness of parties and material witnesses shall be substantiated by a current medical certificate.

(D) The judicial officer may condition a continuance upon the payment of expenses caused to the other parties and of jury fees incurred by the court.

Rule 40.4
EMERGENCIES AND SPECIAL PROCEEDINGS

(a) Matters and Proceedings Heard by Miscellaneous Business Docket (MBD) Judge. There will be designated an MBD judge to hear and determine:

(1) Emergency matters requiring immediate action in cases already assigned to any judge of the court, if the judge to whom a case had been assigned is unavailable or otherwise unable to hear the matter.

(2) Special proceedings, the nature of which precludes their assignment in the ordinary course, e.g., motions relating to grand jury investigations, discovery in cases pending in other districts, enforcement of administrative subpoenas; and

(3) Any other proceedings, including an admission to the bar and a naturalization, which are not part of or related to a case that should be assigned in the ordinary course.

(b) Disposition of "Emergency" Matters. The MBD judge will dispose of matters pursuant to subsection (a)(1), only to the extent necessary to meet the emergency. So far as practicable, consistent with justice and the efficient performance of the business of the court, the matter will be continued for disposition by the judge to whom the case is assigned.

(c) Subsequent "Emergency" Proceedings. If the MBD judge before whom the proceeding is brought concludes that, for lack of an emergency or otherwise, the proceeding should not be determined under this rule, the party who brought the proceeding shall not thereafter present the same matter to any other judge sitting as MBD judge, unless relevant circumstances change in the interim, in which case he shall bring to the attention of such other judge the prior proceeding and the changed circumstances which warrant resubmission of the matter under this rule.

(d) Special and Other Proceedings. Proceedings pursuant to subsections (a)(2) and (3) shall continue before the judge first handling the matter until conclusion.

Rule 41.1
DISMISSAL FOR WANT OF PROSECUTION

(a)(1) Whenever in any civil action the clerk shall ascertain that no proceeding has been docketed therein for a period of ONE (1) year, he shall then mail notice to all persons who have entered an appearance in such a case that, subject to the provisions of subsection (a)(3), the case will be dismissed without further notice thirty (30) days after the sending of the notice.

(2) After the thirtieth day following the sending of the notice, without order of the court the clerk shall, subject to the provisions of subsection (a)(3), enter an order of dismissal for all cases on the list. It shall not be necessary for the clerk to send additional notice of the dismissal to any counsel or party.

(3) A case shall not be dismissed for lack of prosecution if within thirty (30) days of the sending of notice an explanation for the lack of proceedings is filed and the judge to whom the case is assigned orders that it not be dismissed.

(b)(1) Additionally, each judge may from time to time give notice of not less than twenty (20) business days of hearing on a dismissal calendar for actions or proceedings assigned to that judge that appear not to have been diligently prosecuted. Unless otherwise ordered by the assigned judge, each party shall, not less than ten (10) business days prior to the noticed hearing date, serve and file a certificate describing the status of the action or proceeding and showing that good cause exists for the court to retain the case on the docket. Nothing in this rule precludes the filing of a motion for dismissal under Rule 41(b) of the Federal Rules of Civil Procedure.

(2) Failure on the part of the plaintiff to file the required statement or his failure to appear at the scheduled hearing shall be grounds for the dismissal of the action.

(c) The dismissal of a case pursuant to this rule shall not operate as an adjudication on the merits unless the court on motion of a party directs otherwise.

Rule 43.1
TRIAL

(A) Time Limits for Evidentiary Hearing.

(1) Absent agreement of the parties as to the time limits for the trial acceptable to the judicial officer, the judicial officer may order a presumptive limit of a specified number of hours. This time shall be allocated equally between opposing parties, or groups of aligned parties, unless otherwise ordered for good cause.

(2) A request for added time will be allowed only for good cause. In determining whether to grant a motion for an increased allotment of time, the court will take into account:

(a) whether or not the moving party has

(1) used the time since the commencement of trial in a reasonable and proper way, and

(2) complied with all orders regulating the trial;

(b) the moving party's explanation as to the way in which the requested added time would be used and why it is essential to assure a fair trial; and

(c) any other relevant and material facts the moving party may wish

to present in support of the motion.

The court will be receptive to motions for reducing or increasing the allotted time to assure that the distribution is fair among the parties and adequate for developing the evidence.

(B) Evidence at the Evidentiary Hearing.

(1) Each party shall give advance notice to the judicial officer and the other parties, before jury selection, of the identity of all witnesses whose testimony it may offer during trial, whether by affidavit, deposition, or oral testimony.

(2) Not later than two (2) court days before it seeks to use the testimony of any witness, or on shorter notice for good cause shown, a party shall advise the judicial officer and all other parties of its intent to use the testimony of the witness on a specified day.

(3) Except for good cause shown, no party shall be allowed to:

(a) use the testimony of a witness other than the witnesses already listed on the filing with the court before trial commences; or

(b) introduce documentary evidence, during direct examination, other than those exhibits already listed with the judicial officer and furnished to the other parties before trial commences.

Rule 56.1
MOTIONS FOR SUMMARY JUDGMENT

Motions for summary judgment shall include a concise statement of the material facts of record as to which the moving party contends there is no genuine issue to be tried, with page references to affidavits, depositions and other documentation. Failure to include such a statement constitutes grounds for denial of the motion. Opposition to motions for summary judgment shall include a concise statement of the material facts or record as to which it is contended that there exists a genuine issue to be tried, with page references to affidavits, depositions and other documentation. Copies of all referenced documentation shall be filed as exhibits to the motion or opposition. Material facts of record set forth in the statement required to be served by the moving party will be deemed for purposes of the motion to be admitted by opposing parties unless controverted by the statement required to be served by opposing parties.

Rule 58.2
SATISFACTION OF JUDGMENTS

(a) Satisfaction of a money judgment shall be entered by the clerk without order of the court:

(i) On payment into court of the amount of the judgment including costs taxed, plus interest, and the amount of any fees due; or

(ii) On the filing of a satisfaction of judgment executed by the judgment creditor, or his legal representative or assignees with evidence of their authority, or his attorney in the proceeding in which judgment has been entered; or

(iii) On the filing of a satisfaction of judgment executed by the United States Attorney, if the judgment is in favor of the United States; or

(iv) On registration of a certified copy of a satisfaction of judgment entered in another district court.

(b) When satisfaction is made by payment of money into court, that fact shall be noted in the entry of satisfaction.

(c) Entry of judgment shall constitute sufficient authorization for the clerk to accept payment into court.

(d) Mandate of An Appellate Court. An order or judgment of an appellate court in a case appealed from this court shall, if further proceedings are not required, become the order or judgment of this court and be entered as such on receipt of the mandate of the appellate court.

Rule 62.2
SUPERSEDEAS BOND

A supersedeas bond staying execution of a money judgment shall be in the amount of the judgment plus ten (10%) percent of the amount to cover interest and any award of damages for delay plus Five Hundred and no/100 ($500.00) Dollars to cover costs, unless the court directs otherwise.

Rule 67.1
SURETIES

(a) Members of the Bar and Court Officers. No judge, clerk, marshal, member of the bar or other officer or employee of the court may be surety or guarantor of any bond or undertaking in any proceeding in this court.

(b) Form of Bond. Surety bonds shall be signed and acknowledged by the party and his surety or sureties. They shall refer to the statute, rule, or court order under which given, state the conditions of the obligation, and contain a provision expressly subjecting them to all applicable federal statutes and rules.

(c) Security. Except as otherwise provided by law or by order of the court, a bond or similar undertaking must be secured by:

(1) The deposit of cash or obligations of the United States in the amount of the bond (note Rule 67.4 with regard to the court's cash policy); or

(2) The guaranty of a company or corporation holding a certificate of authority from the Secretary of the Treasury pursuant to 6 U.S.C. § 8; or

(3) The guaranty of two (2) individual residents of this district each of whom owns unencumbered real or personal property within the district worth the amount of the bond, in excess of legal obligations and exemptions.

(d) Deposits of cash or obligations of the United States shall be accompanied by a written statement, duly acknowledged, that the signer is owner thereof, that the same is subject to the conditions of the bond, and that the clerk may collect or sell the obligations and apply the proceeds, or the cash deposited, in case of default as provided in the bond. Upon satisfaction of the conditions of the bond, the monies or obligations shall be returned to the owner on the order of a magistrate or district judge.

(e) Individual Sureties. An individual acting as surety, pursuant to subsection (c)(3), shall file an affidavit:

(1) Giving his name, occupation, and residential and business address;

(2) Showing that he is qualified to act as surety; and

(3) [In criminal cases] stating that he will not encumber or dispose of the property on which his qualification as surety depends while the bond remains in effect.

(f) Approval of Bond. Except as otherwise provided by law, the Clerk of Court may approve a bond in the amount fixed by the court or by statute or rule, and secured in the manner provided by subsections (c)(1) or (2). All other bonds must be approved by the court.

(g) Service. The party on whose behalf a bond is given shall promptly, after approval and filing of the bond, serve a copy of it on all other parties to the proceeding, but such service need not be made on the United States in a criminal case.

(h) Modification of Bond. The amount or terms of a bond or similar undertaking may be changed at any time as justice requires, by order of the court on its own motion or on motion of a party.

(i) Further Security. The court may order a party to furnish further or different security, or require personal sureties to furnish further justification.

Rule 67.2
DEPOSIT IN COURT

The following procedures apply to deposits into the registry of the Court in civil actions.

(A) Receipt of Funds.

(1) No money may be sent to the Court or its officers for deposit into the Court's registry without a Court order by the presiding judge in the case or proceeding.

(2) All money ordered to be paid into the Court or received by its officers in any case pending or adjudicated must be deposited with the Treasurer of the United States in the name and to the credit of this Court pursuant to 28 U.S.C. § 2041 through depositories designated by the Treasury to accept such deposit on its behalf.

(3) The party making the deposit or transferring funds to the Court's Registry must serve the order permitting the deposit or transfer on the Clerk of Court.

(B) Investment of Registry Funds.

(1) Funds on deposit with the Court will be placed in interest-bearing instruments in the Court Registry Investment System (CRIS) administered through the United States District Court for the Southern District of Texas, which is the only investment mechanism authorized.

(2) Under CRIS, monies deposited in each case under Local Civil Rule 67.2(a) will be "pooled" together with those on deposit with the Treasury to the credit of other courts in the CRIS and used to purchase Treasury

Securities, which will be held at the Federal Reserve Bank, Dallas/Houston Branch, in a safekeeping account in the name and to the credit of the Clerk, United States Court for the Southern District of Texas, hereby designated custodian for the Court Registry Investment System.

(3) An account for each case will be established in the CRIS titled in the name of the case giving rise to the investment in the System. Income received from fund investments will be distributed to each case based on the ratio each account's principal and income has to the aggregate principal and income total in the fund each week. Weekly reports showing the income earned and the principal amounts contributed in each case will be prepared and distributed to each court participating in CRIS and made available to litigants and/or their counsel.

(C) Registry Investment Fee.

The custodian is authorized and directed by this Local Civil Rule to deduct the registry fee for maintaining accounts in the Fund. The proper registry fee is to be determined on the basis of the rates published by the Director of the Administrative Office as approved by the Judicial Conference.

Rule 67.3
DISBURSEMENT OF REGISTRY FUNDS

The clerk shall not distribute any registry funds without an order of a district judge of this court. All orders for distribution, unless prepared by a deputy clerk assigned to the financial section of the clerk's office, must be approved by the clerk before presentation to a district judge.

All checks drawn by the Clerk of Court on deposits made in the registry of the court shall be made payable to the order of the payee(s) as the name(s) thereof appear in the orders of this court providing for distribution.

Disbursement from the registry of the court shall be made in accordance with the terms and at the time provided in the order for disbursement, or immediately upon receipt of the order if no time is specified, except in cases where it is necessary to allow time for a check or draft to clear. Prior to distribution, any party claiming an interest in the funds may move the court for a stay of the disbursement order pending appeal.

(a) Payees. If more than one check is to be issued on a single order, the portion due to each payee must be set out separately. In all cases, counsel must furnish the clerk with the address and social security number or taxpayer identification number of each recipient, and this number shall be included in the court order for release of funds.

(b) Disbursement of Monies other than Registry Funds. All disbursements to individuals made by the clerk of this court of monies received in his official capacity, other than registry funds, when made by check of the clerk on the Treasury of the United States, shall be made to the payee as the name shall appear in the disbursement voucher certified by the clerk or his designated certifying officer. The name of the payee in the disbursement voucher shall conform to the name appearing in the clerk's records of the case to which the disbursement relates. The clerk shall endeavor to note of record the given name of all individuals making deposits of monies with the clerk, and in those cases where the given name appears of record, disbursement vouchers and checks thereunder shall show the full given name, additional initials, if any, and the surname of the payee.

(c) Escrow Agents. In lieu of these provisions, an interested party may apply to the court for appointment of escrow agents. Such agents may deposit funds in a financial institution in an interest-bearing account and provide for the disposition of interest so earned, as approved by the court.

Rule 67.4
PAYMENTS AND DEPOSITS MADE WITH THE CLERK

(a) The clerk will not routinely accept payments or deposits in cash; but the court, on motion of any party, may order that the clerk accept cash in a particular instance.

(b) All checks must be made payable to "Clerk, United States District Court." The clerk is authorized to refuse any check not so made payable.

(c) The clerk may, in his discretion, require any payment to be made by certified check or its equivalent. The clerk shall require payment of bail to be made by certified check or its equivalent, unless otherwise ordered by the court.

Rule 68.2
SETTLEMENT

When a case is settled, the parties shall file in the office of the clerk a signed agreement for judgment or stipulation for dismissal, as appropriate, within thirty (30) days, unless the court otherwise orders.

Rule 77.1
SITTINGS

(A) The court shall be in continuous session for transacting judicial business on all business days throughout the year at Boston, Worcester and Springfield.

(B) Any judge of the court may, in the interest of justice or to further efficient performance of the business of the court, conduct proceedings at a special session at any time, anywhere in the district, on request of a party or otherwise.

Rule 77.2
OFFICE OF THE CLERK

The offices of the Clerk of Court at Boston, Worcester and Springfield shall be open from 8:30 a.m. until 5:00 p.m. on all days except Saturdays, Sundays, legal holidays and other days so ordered by the court and announced in advance, if feasible.

Rule 79.1
EXHIBITS

(a) Custody. Unless otherwise ordered by the court, all exhibits marked in evidence or for identification shall remain in the custody of the party that introduced them. Exhibits shall be preserved in the form in which they were offered until the proceeding is finally concluded. The party having custody shall make the exhibits available to all parties.

(b) Any party may move the court for custody arrangements that differ from those in section (a) upon a showing of good cause. The court may, on its own motion, provide for different custody arrangements or modify existing arrangements at any time.

(c) A court order that the clerk take custody of any exhibit shall specify the period during which the clerk shall maintain custody, the party to whom the exhibit shall be returned at the end of the period, and provision for destruction by the clerk without further notice to the parties at a set time after expiration of the custody period, if the party to whom the exhibit is to be returned fails to remove it from the custody of the clerk. Such court order shall constitute the only notice required for the purpose of exhibit disposal.

(d) It shall be sufficient if orders under the above sections are in writing, signed by the court or the clerk at the direction of the court, or are entered orally on the record and the substance of the order is reproduced on the docket sheet.

(e) Photographs of Chalks. In order to make a record of a chalk, the court may permit a party to photograph it or otherwise copy it, on such terms as are just. Unless otherwise ordered by the court, in jury cases chalks may be destroyed by the clerk as soon as the jury verdict has been recorded; in nonjury cases, chalks may be destroyed as soon as the evidence is closed.

Rule 81.1
REMOVAL

(a) Within thirty (30) days after filing a notice for removal of an action from a state court to this court pursuant to 28 U.S.C. § 1446, the party filing the notice shall file certified or attested copies of all records and proceedings in the state court and a certified or attested copy of all docket entries in the state court.

(b) If the clerk of this court has not received the papers required to be filed under section (a) within forty-five (45) days of the filing of the notice for removal, the case shall be remanded to the state court from which it was removed, unless this court directs otherwise.

(c) When a case is remanded to a state court, the clerk shall mail certified copies of the docket and order of remand, together with the remainder of the original file, to the clerk of the state court.

Rule 81.2
DEFINITION OF A JUDICIAL OFFICER

As used in these rules, "judicial officer" refers to either a United States District Court Judge or a United States Magistrate Judge. For purposes of LR 83.6(5)(A), the term "judicial officer" also refers to a United States Bankruptcy Judge.

Rule 83.1A
PROCEDURE FOR ADOPTING, RESCINDING AND AMENDING RULES

(a) These rules may be amended or rescinded by a majority of the active judges of this court.

(b) The clerk will maintain in suitable form an updated master copy of the rules.

Rule 83.1B
GENERAL ORDER DOCKET

(a) Effective upon the adoption of these local rules, the clerk shall establish and maintain one (1) general order docket for each calendar year.

(b) All rules, administrative orders or directives of the court and amendments thereto shall bear a general order number assigned by the clerk, and be entered on the general order docket.

(c) The clerk shall place all prior administrative orders and directives, if they remain in effect at the time of adoption of these rules, on the general order docket for the year in which these rules are adopted.

(d) Any judge of this court may enter standing orders for his session, and may direct the clerk to maintain a docket therefor in accordance with sections (a) through (c).

Rule 83.2A
RELEASE OF INFORMATION BY ATTORNEYS

No lawyer or law firm shall release or authorize the release of information or opinion which a reasonable person would expect to be disseminated by means of public communication, in connection with pending or imminent criminal litigation with which he or the firm is associated, if there is a reasonable likelihood that such dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

With respect to a grand jury or other pending investigation of any criminal matter, a lawyer participating in or associated with the investigation shall refrain from making any extrajudicial statement, which a reasonable person would expect to be disseminated by means of public communication, that goes beyond the public record or that is not necessary to inform the public that the investigation is underway, to describe the general scope of the investigation, to obtain assistance in the apprehension of a suspect, to warn the public of any dangers, or otherwise to aid in the investigation.

From the time of arrest, issuance of an arrest warrant, or the filing of a complaint, information, or indictment in any criminal matter until the commencement of trial or disposition without trial, a lawyer or law firm associated with the prosecution or defense shall not release or authorize the release of any extrajudicial statement, which a reasonable person would expect to be disseminated by means of public communication, relating to that matter and concerning:

(1) The prior criminal record (including arrests, indictments, or other charges of crime), or the character or reputation of the accused, except that the lawyer or law firm may make a factual statement of the accused's name, age, residence, occupation, and family status, and if the accused has not been apprehended, a lawyer associated with the prosecution may release any information necessary to aid in his apprehension or to warn the public of any dangers he may present;

(2) The existence or contents of any confession, admission, or statement given by the accused, or the refusal or failure of the accused to make any statement;

(3) The performance of any examinations or tests or the accused's refusal or failure to submit to an examination or test;

(4) The identity, testimony, or credibility of prospective witnesses, except that the lawyer or law firm may announce the identity of the victim if the announcement is not otherwise prohibited by law;

(5) The possibility of a plea of guilty to the offense charged or a lesser offense; and

(6) Any opinion as to the accused's guilt or innocence as to the merits of the case or the evidence in the case.

The foregoing shall not be construed to preclude the lawyer or law firm during this period, in the proper discharge of his or its official or professional obligations, from announcing the facts and circumstances of arrest (including time and place of arrest, resistance, pursuit, and use of weapons), the identity of the investigating and arresting officer or agency, and the length of the investigation; from making an announcement, at the time of seizure of any physical evidence other than a confession, admission or statement, which is limited to a description of the evidence seized; from disclosing the nature, substance, or text of the charge, including a brief description of the offense charged; from quoting or referring without comment to public records of the court in the case; from announcing the scheduling or result of any stage in the judicial process; from requesting assistance in obtaining evidence; or from announcing without further comment that the accused denies the charges made against him.

During the trial of any criminal matter, including the period of selection of the jury, no lawyer or law firm associated with the prosecution or defense shall give or authorize any extrajudicial statement or interview relating to the trial or the parties or issues in the trial which a reasonable person would expect to be disseminated by means of public communication, except that the lawyer or law firm may quote from or refer without comment to public records of the court in the case.

After the completion of a trial or disposition without trial of any criminal matter, and prior to the imposition of sentence, a lawyer or law firm associated with the prosecution or defense shall refrain from making or authorizing any extrajudicial statement which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will affect the imposition of sentence.

Nothing in this rule is intended to preclude the formulation or application of more restrictive rules relating to the release of information about juvenile or other offenders, to preclude the holding of hearings or the lawful issuance of reports by legislative, administrative, or investigative bodies, or to preclude any lawyer from replying to charges of misconduct that are publicly made against him.

A lawyer or law firm associated with a civil action shall not during its investigation or litigation make or participate in making an extrajudicial statement, other than a quotation from or reference to public records, which a reasonable person would expect to be disseminated by means of public communication if there is a reasonable likelihood that such dissemination will interfere with a fair trial and which relates to:

(1) Evidence regarding the occurrence or transaction involved.

(2) The character, credibility, or criminal record of a party, witness, or prospective witness.

(3) The performance or results of any examination or tests or the refusal or failure of a party to submit to such.

(4) His opinion as to the merits of the claims or defenses of a party, except as required by law or administrative rule.

(5) Any other matter reasonably likely to interfere with a fair trial of the action.

Rule 83.2B
SPECIAL ORDERS FOR THE PROTECTION OF THE ACCUSED OR THE LITIGANTS IN WIDELY PUBLICIZED OR SENSATIONAL CRIMINAL OR CIVIL CASES

In a widely publicized or sensational criminal or civil case, the court, on motion of either party or on its own motion, may issue a special order governing such matters as extrajudicial statements by parties and witnesses likely to interfere with the rights of the accused or the litigants to a fair trial by an impartial jury, the seating and conduct in the courtroom of spectators and news media representatives, the management and sequestration of jurors and witnesses, and any other matters which the court may deem appropriate for inclusion in such an order.

Rule 83.3
PHOTOGRAPHING, RECORDING AND BROADCASTING

(a) Recording and Broadcasting Prohibited. Except as specifically provided in these rules or by order of the court, no person shall take any photograph, make any recording, or make any broadcast by

radio, television, or other means, in the course of or in connection with any proceedings in this court, on any floor of any building on which proceedings of this court are or, in the regular course of the business of the court, may be held. This prohibition shall apply specifically but shall not be limited to the second, third, ninth, eleventh, twelfth, thirteenth, fifteenth, sixteenth, eighteenth, nineteenth and twentieth floors of the John W. McCormack Post Office and Courthouse Building in Boston and the fifth floor of the Courthouse Building in Springfield.

(b) Voice Recordings by Court Reporters. Official court reporters are not prohibited by section (a) from making voice recordings for the sole purpose of discharging their official duties. No recording made for that purpose shall be used for any other purpose by any person.

(c) The court may permit (1) the use of electronic or photographic means for the preservation of evidence or the perpetuation of a record, and (2) the broadcasting, televising, recording, or photographing of investitive, ceremonial, or naturalization proceedings.

(d) The use of dictation equipment is permitted in the clerk's office of this court by persons reviewing files in that office.

Rule 83.4
COURTROOM SEARCHES; COURTROOM SEATING

(a) All persons entering a courtroom are subject to search by the United States Marshal, a Deputy United States Marshal, or any other officer authorized by the court, as are all briefcases, parcels or other containers carried by persons entering a courtroom.

(b) Except by leave of the judge or magistrate presiding at a particular session of this court, only members of the bar of this court may be seated within the bar enclosure.

(c) With the exception of weapons carried by the United States Marshal, Deputy United States Marshals, or Federal Protective Officers, no weapons, other than exhibits, are permitted in any courtroom. No other person, including any federal law enforcement agent, shall bring a weapon other than an exhibit into any courtroom, except as specifically set forth below with respect to the courtrooms of the United States District Judges or United States Magistrates. No firearms intended for introduction as an exhibit may be brought into any courtroom unless it is first presented to the marshal for a safety check and the marshal reports to the clerk that the check has been completed.

Nothing in this rule shall be construed as precluding a federal law enforcement officer having custody or being in charge of the transportation of a federal prisoner from carrying a firearm in a courtroom assigned to a United States District Judge or United States Magistrate on the occasion of proceedings under Rule 5, Federal Rules of Criminal Procedure, or as precluding a duly authorized Correctional Officer of the Commonwealth of Massachusetts, entrusted with responsibility of transporting a state prisoner to proceedings before a United States Magistrate for civil or criminal proceedings where a Deputy United States Marshal is unavailable for such purpose, provided that the judge or magistrate is first advised of that fact.

Rule 83.5.1
BAR OF THE DISTRICT COURT

(a) Admission to the District Bar.

(1) An attorney is qualified for admission to the district bar of this district if the attorney (i) is currently in good standing as an attorney admitted to practice before the Supreme Judicial Court of Massachusetts; (ii) has satisfied the examination requirements as defined by the District Committee on Admissions relating to familiarity with the Federal Rules of Civil Procedure, the Federal Rules of Evidence, principles of federal jurisdiction and venue, and rules relating to professional responsibility; and (iii) has filed a certificate in a form approved by the District Committee on Admissions attesting to familiarity with the local rules of this district. For so long as the Rules of the Board of Bar Examiners of the Commonwealth of Massachusetts include for examination the subjects named in this rule, proof of good standing as an attorney admitted to practice before the Supreme Judicial Court of Massachusetts satisfies the examination requirement set out in this rule. An attorney admitted to practice in this court before the effective date of this rule and in good standing upon that date is a member of this district bar as of that date without further action on the attorney's part.

(2) All applicants for admission to practice before this court shall complete, verify, and file an application on an official form provided by the clerk.

(3) The clerk shall examine the application and if it is in order transmit it to the United States Attorney.

(4) Within twenty (20) days after the application is transmitted to the United States Attorney, if concluding on the basis of the information contained in the application that the application should be granted, the United States Attorney shall return the application to the clerk with written approval. The clerk shall place the name of the applicant on the list for the first available admissions ceremony.

(5) The United States Attorney, if concluding on the basis of the information contained in the application or otherwise that the application should not be granted, shall return the application to the clerk with written objection. The clerk shall deny the application without prejudice and send notice of the denial together with a copy of the United States Attorney's objection to the applicant.

(6) Any applicant denied admission may ask the court by motion to approve the application. The motion shall be presented to the Miscellaneous Business Docket (MBD) judge, who may rule on the motion *ex parte*, invite a response from the United States Attorney and the clerk, or schedule the matter for hearing. If the court approves the application, the clerk shall proceed as under subsection (a)(4).

(7) Approved applicants must appear at an admissions ceremony and make the following oath or affirmation before the judge presiding over the admissions ceremony:

I solemnly swear (affirm) that I shall conduct myself as a member of the bar of the United States District Court for the District of Massachusetts uprightly and according to the law.

Approved applicants shall be admitted to the district bar of this district upon signing the register of attorneys and paying to the "Clerk, United States District Court" the approved attorney admission fee.

(b) Student Practice Rule.

(1) A senior law student in a law school who has successfully completed a course for credit or who is enrolled in a course for credit in evidence or trial practice, with the written recommendation of the dean of such school of the law student's character, legal ability, and training, may appear without compensation (i) on behalf of the government or any governmental agency, if the conduct of the case is under the supervision of a member of the district bar; (ii) on behalf of indigent defendants in criminal proceedings, if the defendant consents (as provided in subsection (b)(6) and if the conduct of the case is under the supervision of a member of the district bar assigned by the court or employed by a nonprofit program of legal aid, legal assistance or defense, or a law school clinical instruction program; and (iii) on behalf of indigent parties in civil proceedings, if the party consents (as provided in subsection (b)(6)), and if the conduct of the case is under the supervision of a member of the district bar assigned by the court or employed by a nonprofit program of legal aid, legal assistance or defense, or a law school clinical instruction program.

(2) A student may not appear in a criminal proceeding, either for the defense or for the prosecution, unless the dean's recommendation indicates that the student, in addition to satisfying all other requisites of this rule, has also successfully completed for credit a course in criminal procedure.

(3) The expression "supervision" shall be construed to require the attendance in court of the supervising member of the district bar. The term "senior law student" shall mean a student who has completed successfully the next-to-the-last year of law school study.

(4) The written recommendation described in subsection (b)(1) shall be filed with the Clerk of Court and shall be in effect, unless withdrawn earlier, until the date of the student's graduation from law school.

(5) A student who has begun the next-to-the-last year of law study in a law school, qualified and supervised as provided in subsections (b)(1), (3) and (4), may appear in civil proceedings under the same conditions as a senior law student, if the written approval referred to in subsections (b)(1) and (4) states that the law student is currently participating in a law school clinical instruction program.

(6) Before acting or appearing for any client, the student shall: (i) file with the clerk a certificate stating that the student has read and will abide by the standards of professional conduct set out in Rules 3:07 and 3:08 of the Rules of the Supreme Judicial Court of Massachusetts and is familiar with the local rules of this district; (ii) disclose to the client the student's status as a law student; (iii) obtain from the client a signed document in which the client acknowledges having been informed of the student's status and authorizes the named student to

appear for and represent the client in the litigation or proceedings identified in the document; (iv) have the document approved by the supervising attorney; and (v) file the document and the written appearance of the supervising attorney with the Clerk of Court.

(7) The rules of law and of evidence relating to communications between attorney and client shall govern communications made or received by any student acting under the provisions of this rule.

(8) A student acting under this rule shall comply with the standards of professional conduct set out in Rules 3:07 and 3:08 of the Rules of the Supreme Judicial Court of Massachusetts. Failure of an attorney supervising students to provide proper training or supervision may be grounds for disciplinary action or revocation or restriction of the attorney's authority to supervise students.

(9) The expression "without compensation" used in this rule shall not be construed to prohibit the receipt of a fixed compensation paid regularly by a governmental agency or legal assistance program or law school clinical instruction program acting as the employer of a law student. It shall, however, be construed to prohibit the receipt of a fee by a law student from a client for work on a particular case.

Rule 83.5.2
APPEARANCES

(a) Generally. The filing of the complaint shall constitute an appearance by the attorney who signs it. All other appearances in a case shall be made by filing a notice of appearance containing the docket number of the case, name, address and telephone number of the person entering an appearance, in compliance with Rule 5.1(a)(1).

(b) Appearance *Pro Se*. A party who appears *pro se* shall so state in the initial pleading or other paper filed by him or in his notice of appearance. The words "*pro se*" shall follow his signature on all papers subsequently filed by him in the same case.

(c) Withdrawal of Appearance. An attorney may withdraw from a case by serving notice of his withdrawal on his client and all other parties and filing the notice, provided that (1) such notice is preceded or accompanied by notice of the appearance of other counsel; (2) there are no motions pending before the court; (3) no trial date has been set; and (4) no hearings or conferences are scheduled, and no reports, oral or written, are due. Unless these conditions are met, an attorney (including one whose services have been terminated by his client) may withdraw from a case only by leave of court.

(d) Firms and Corporations. The court will not recognize the appearance of a firm or professional corporation unless it is accompanied by the appearance of at least one (1) attorney. In the event that a party is represented by more than one (1) attorney, whether or not from the same firm, the clerk shall not be required to send notice of orders, judgments, trial settings, etc., to more than one (1) attorney for any party, unless the attorneys represent different interests and this fact is noted on the record.

(e) Change of Address. Each attorney appearing and each party appearing *pro se* is under a continuing duty to notify the clerk of any change of address and telephone number. Notice under this rule shall be filed in every case. Any attorney or party appearing *pro se* who has not filed an appearance or provided the clerk with his current address in accordance with this rule shall not be entitled to notice. Notice mailed to an attorney's or party's last address of record shall constitute due notice contestable only upon proof of a failure to mail delivery.

Rule 83.5.3
PRACTICE BY PERSONS NOT MEMBERS OF THE BAR

(a) Attorneys for the United States. An attorney in good standing as a member of the bar in every jurisdiction where he has been admitted to practice and not subject to pending disciplinary proceedings as a member of the bar of any United States District Court may appear and practice in this court as the attorney for the United States or any agency of the United States or an officer of the United States in his official capacity.

(b) Other Attorneys. An attorney who is a member of the bar of any United States District Court or the bar of the highest court of any state may appear and practice in this court in a particular case by leave granted in the discretion of the court, provided he files a certificate that (1) he is a member of the bar in good standing in every jurisdiction where he has been admitted to practice; (2) there are no disciplinary proceedings pending against him as a member of the bar in any jurisdiction; and (3) he is familiar with the Local Rules of the United States District Court for the District of Massachusetts; and provided, further his application for leave to practice in this court is on motion of a member of the bar of this court, who shall also file an appearance. An attorney seeking admission under this subsection may not enter an appearance or sign any papers until his application has been granted, except that the attorney may sign a complaint or any paper necessary to prevent entry of default for failure to answer or otherwise plead, provided such complaint or other paper is accompanied by his application for admission in proper form.

(c) Other Persons. A person who is not a member of the bar of this court, and to whom sections (a) and (b) are not applicable, will be allowed to appear and practice before the court only in his own behalf.

Rule 83.6
RULES OF DISCIPLINARY ENFORCEMENT

(1) Attorneys Convicted of Crimes.

(A) Upon the filing with this court of a certified copy of a judgment of conviction demonstrating that any attorney admitted to practice before the court has been convicted in any court of the United States, or of any state, the District of Columbia, territory, commonwealth, or possession of the United States of a serious crime as hereinafter defined, the court shall enter an order immediately suspending that attorney, whether the conviction resulted from a plea of guilty, or *nolo contendere*, or from a verdict after trial or otherwise, and regardless of the pendency of any appeal, until final disposition of a disciplinary proceeding to be commenced upon such conviction. A copy of such order shall immediately be served upon the attorney. Upon good cause shown, the court may set aside such order when it appears in the interest of justice to do so.

(B) The term "serious crime" shall include any felony and any lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime in the jurisdiction where the judgment was entered, involves false swearing, misrepresentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt of a conspiracy or solicitation of another to commit a "serious crime."

(C) A certified copy of a judgment of conviction of an attorney for any crime shall be conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against that attorney based upon the conviction.

(D) Upon the filing of a certified copy of a judgment of conviction of an attorney for a serious crime, the court shall, in addition to suspending that attorney in accordance with the provisions of this rule, also refer the matter to counsel for the institution of a disciplinary proceeding before the court in which the sole issue to be determined shall be the extent of the final discipline to be imposed as a result of the conduct resulting in the conviction, provided that a disciplinary proceeding so instituted will not be brought to final hearing until all appeals from the conviction are concluded.

(E) Upon the filing of a certified copy of a judgment of conviction of an attorney for a crime not constituting a "serious crime," the court may refer the matter to counsel for whatever action counsel may deem warranted, including the institution of a disciplinary proceeding before the court; provided, however, that the court may in its discretion make no reference with respect to convictions for minor offenses.

(F) An attorney suspended under the provisions of this rule will be reinstated immediately upon the filing of a certificate demonstrating that the underlying conviction of a serious crime has been reversed but the reinstatement will not terminate any disciplinary proceeding then pending against the attorney, the disposition of which shall be determined by the court on the basis of all available evidence pertaining to both guilt and the extent of discipline to be imposed.

(2) Discipline Imposed By Other Courts.

(A) Any attorney admitted to practice before this court shall, upon being subject to public discipline by any other court of the United States, or by a court of any state, the District of Columbia, territory, commonwealth, or possession of the United States, promptly inform the clerk of this court of such action.

(B) Upon the filing of a certified or exemplified copy of a judgment or order demonstrating that an attorney admitted to practice before this court has been disciplined by another court, this court shall forthwith issue a notice directed to the attorney containing:

(i) a copy of the judgment or order from the other court; and

(ii) an order to show cause directing that the attorney inform this court within thirty (30) days after service of that order upon the attorney, personally or by mail, of any claim by the attorney predicated upon the grounds set forth in subsection (2)(D) hereof that the imposition of the identical discipline by this court would be unwarranted and the reasons therefor. The order shall state that a hearing on such a claim may be had if requested within fifteen (15) days after service of the order; otherwise the matter will be determined on the papers without hearing.

(C) In the event the discipline imposed in the other jurisdiction has been stayed there, any reciprocal discipline imposed in this court shall be deferred until such stay expires.

(D) Upon the expiration of thirty (30) days from service of the notice issued pursuant to the provisions of subsection (2)(B), or any longer period needed for a hearing and consideration by the court, this court shall impose the identical discipline unless the respondent-attorney demonstrates, or this court finds, that upon the face of the record upon which the discipline in another jurisdiction is predicated it clearly appears:

(i) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(ii) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this court could not, consistent with its duty, accept as final the conclusion on that subject; or

(iii) that the imposition of the same discipline by this court would result in grave injustice; or

(iv) that the misconduct established is deemed by this court to warrant substantially different discipline. Where this court determines that any of said elements exist, it shall enter such other order as it deems appropriate.

(E) In all other respects, a final adjudication in another court that an attorney has been guilty of misconduct shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this court.

(F) This court may at any stage appoint counsel to prosecute the disciplinary proceedings.

(3) Disbarment on Consent or Resignation in Other Courts.

(A) Any attorney admitted to practice before this court who shall be disbarred on consent or resign from the bar of any other court of the United States, or from the bar of any state, the District of Columbia, territory, commonwealth, or possession of the United States while an investigation into allegations of misconduct is pending, shall, upon the filing with this court of a certified or exemplified copy of the judgment or order accepting such disbarment on consent or resignation, cease to be permitted to practice before this court and be stricken from the roll of attorneys admitted to practice before this court.

(B) Any attorney admitted to practice before this court shall, upon being disbarred on consent or resigning from the bar of any other court of the United States, or from the bar of any state, the District of Columbia, territory, commonwealth, or possession of the United States while an investigation into allegations of misconduct is pending, promptly inform the clerk of this court of such disbarment on consent or resignation.

(4) Standards for Professional Conduct.

(A) For misconduct defined in these rules, and for good cause shown, and after notice and opportunity to be heard, any attorney admitted to practice before this court may be disbarred, suspended from practice before this court, reprimanded or subjected to such other disciplinary action as the circumstances may warrant.

(B) Acts or omissions by an attorney admitted to practice before this court pursuant to this Rule 83.6, or appearing and practicing before this court pursuant to Rule 83.7, individually or in concert with any other person or persons, that violate the ethical requirements and rules concerning the practice of law of the Commonwealth of Massachusetts, shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship. The ethical requirements and rules concerning the practice of law mean those canons and rules adopted by the Supreme Judicial Court of Massachusetts, embodied in Rules 3:05, 3:07 and 3:08 of said court, as they may be amended from time to time by said court, except as otherwise provided by specific rule of this court after consideration of comments by representatives of bar associations within the Commonwealth.

(5) Disciplinary Proceedings.

(A) When misconduct or allegations of misconduct that, if substantiated, would warrant discipline as to an attorney admitted to practice before this court, is brought to the attention of a judicial officer, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these rules, the judicial officer may refer the matter to counsel for investigation, the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

(B) Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the respondent-attorney because sufficient evidence is not present, or because there is pending another proceeding against the respondent-attorney, the disposition of which in the judgment of counsel should be awaited before further action by this court is considered or for any other valid reason, counsel shall file with the court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise, setting forth the reasons therefor.

(C) To initiate formal disciplinary proceedings, counsel shall obtain an order of this court upon a showing of probable cause, requiring the respondent-attorney to show cause within thirty (30) days after service of that order upon that attorney, personally or by mail, why the attorney should not be disciplined. The order to show cause shall include a certification of all courts before which the respondent-attorney is admitted to practice, as specified in the form appended to these rules.

(D) Upon the respondent-attorney's answer to the order to show cause, if any issue of fact is raised or the respondent-attorney wishes to be heard in mitigation, the Chief Judge of this court or, in his absence, the next senior district judge shall set the matter for prompt hearing before three (3) judges of this court, provided however that if the disciplinary proceeding is predicated upon the complaint of a judge of this court the complaining judge shall not sit, and if the Chief Judge is the complainant, the member of the court who is next senior shall assume his responsibilities in the matter. An *en banc* hearing may be granted on the affirmative vote of five (5) judges. Nothing herein shall prevent the court from using a master for purposes of fact finding and to make recommendations in a suitable case. The respondent-attorney shall execute the certification of all courts before which that respondent-attorney is admitted to practice, and file the certification with the answer.

(6) Disbarment on Consent While Under Disciplinary Investigation or Prosecution.

(A) Any attorney admitted to practice before this court who is the subject of an investigation into, or a pending proceeding involving, allegations of misconduct may consent to disbarment, but only by delivering to this court an affidavit stating that the attorney desires to consent to disbarment and that:

(i) the attorney's consent is freely and voluntarily rendered; the attorney is not being subjected to coercion or duress; the attorney is fully aware of the implications of so consenting;

(ii) the attorney is aware that there is a presently pending investigation or proceeding involving allegation that there exist grounds for the attorney's discipline, the nature of which the attorney shall specifically set forth;

(iii) the attorney acknowledges that the material facts so alleged are true; and

(iv) the attorney so consents because the attorney knows that if charges were predicated upon the matters under investigation, or if the proceedings were prosecuted, the attorney could not successfully defend himself.

(B) Upon receipt of the required affidavit, this court shall enter an order disbarring the attorney.

(C) The order disbarring the attorney on consent shall be a matter of public record. However, the affidavit required under the provisions of this rule shall not be publicly disclosed or made available for use in any other proceeding except upon order of this court.

(7) Reinstatement.

(A) After Disbarment or Suspension. An attorney who is suspended shall be automatically reinstated at the end of the period of suspension upon the filing with the court of an affidavit of compliance with the provisions of the order. An attorney who is suspended indefinitely or disbarred may not resume practice until reinstated by order of this court. Suspensions may be directed to run concurrently with a suspension mandated by other state or federal courts, in which event the attorney shall be eligible for reinstatement in this court when said suspension expires, and will be automatically reinstated upon filing with this court an affidavit indicating that the period of suspension has run.

(B) Hearing on Application. Petitions for reinstatement by a disbarred or indefinitely suspended attorney under this rule shall be filed with the Chief Judge of this court. Upon receipt of the petition, the Chief Judge shall promptly refer the petition to counsel and shall assign the matter for prompt hearing before one or more judges of this court provided, however, that if the disciplinary proceeding was predicated upon the complaint of a judge of this court, the complaining judge shall not sit, and if the Chief Judge is the complainant, the judge next senior shall assume his responsibilities in the matter. The judge or judges assigned to the matter shall within thirty (30) days after referral

schedule a hearing at which the petitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law before this court and that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest.

(C) Duty of Counsel. In all proceedings upon a petition for reinstatement, cross-examination of the witnesses of the respondent-attorney and the submission of evidence, if any, in opposition to the petition shall be conducted by counsel.

(D) Conditions of Reinstatement. If the petitioner is found unfit to resume the practice of law, the petition shall be dismissed. If the petitioner is found fit to resume the practice of law, the judgment shall reinstate him, provided that the judgment may make reinstatement conditional upon the payment of all or part of the costs of the proceedings, and upon the making of partial or complete restitution to parties harmed by the disbarment. Provided further, that if the petitioner has been suspended or disbarred for five (5) years or more, reinstatement may be conditioned, in the discretion of the judge or judges before whom the matter is heard, upon furnishing proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension or disbarment.

(E) Successive Petitions. No petition for reinstatement under this rule shall be filed within one (1) year following an adverse judgment upon a petition for reinstatement filed by or on behalf of the same person.

(8) Attorneys Specially Admitted.

(A) Whenever an attorney applies to be admitted or is admitted to this court for purposes of a particular proceeding (*pro hac vice*), the attorney shall be deemed thereby to have conferred disciplinary jurisdiction upon this court for any alleged misconduct of that attorney arising in the course of or in preparation for such proceeding.

(9) Appointment of Counsel.

(A) Whenever counsel is to be appointed pursuant to these rules to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a disciplined attorney, this court shall appoint as counsel the disciplinary agency of the highest court of the state or commonwealth in which the attorney is maintaining his principal office, or other disciplinary agency which the court deems suitable, including the United States Attorney for this district. If no such disciplinary agency exists or such disciplinary agency declines appointment, or such appointment is clearly inappropriate, this court shall appoint as counsel one or more members of the bar of this court to investigate allegations of misconduct or to prosecute disciplinary proceedings under these rules, provided, however, that the respondent-attorney may move to disqualify an attorney so appointed who is or has been engaged as an adversary of the respondent-attorney in any matter. Counsel, once appointed, may not resign without permission of this court.

(10) Duties and Powers of the Clerk.

(A) The clerk of this court shall promptly notify the National Discipline Data Bank operated by the American Bar Association of any order imposing public discipline upon any attorney admitted to practice before this court.

(B) The clerk of this court shall, upon being informed that any attorney admitted to practice before this court has been convicted of any crime or has been subjected to discipline by another court, obtain and file with this court a certified or exemplified copy of such conviction or disciplinary judgment or order.

(C) Whenever it appears that any person who is disbarred or suspended or censured or disbarred on consent by this court is admitted to practice law in any other jurisdiction or before any other court, the clerk of this court may, if necessary to supplement the action taken under subsection (10)(A), so advise the disciplinary authority in such other jurisdiction or such other court.

(11) Jurisdiction.

(A) Nothing contained in these rules shall be construed to deny to the court such powers as are necessary for the court to maintain control over proceedings conducted before it, such as proceedings for contempt under Title 18 of the United States Code or under Rule 42 of the Federal Rules of Criminal Procedure.

Rule 106.1
GRAND JURIES

(a) The names of any jurors drawn from the qualified jury wheel and selected to sit on a grand jury shall be kept confidential and not made public or disclosed to any person not employed by the district court, except as otherwise authorized by a court order in an individual case pursuant to 28 U.S.C. § 1867(f).

(b) All subpoenas, motions, pleadings, and other documents filed with the clerk concerning or contesting grand jury proceedings shall be sealed and impounded unless otherwise ordered by the court based upon a showing of particularized need. Impoundment under this rule shall not preclude necessary service of papers on opposing parties or their counsel nor prohibit the clerk from providing copies of papers to the party or counsel filing same.

Rule 106.2
RELEASE OF INFORMATION BY COURTHOUSE PERSONNEL IN CRIMINAL CASES

All court supporting personnel, including the United States Marshal, Deputy United States Marshals, the Clerk of Court, deputy clerks, probation officers, assistant probation officers, bailiffs, court reporters, and employees or subcontractors retained by the court-appointed official reporters, judges' secretaries and law clerks and student assistants, and other employees are prohibited from disclosing without authorization by the court, information relating to a pending grand jury proceeding or criminal case that is not part of the public records of the court. Divulging information concerning *in camera* hearings is also prohibited.

Rule 112.1
MOTION PRACTICE

Unless otherwise specified in these Local Rules or by order of the court, motion practice in criminal cases shall be subject to L.R. 7.1.

Rule 112.2
EXCLUDABLE DELAY PURSUANT TO THE SPEEDY TRIAL ACT

(A) The Court, having found that a fair and prompt resolution of criminal cases is best served by the minimizing of formal motion practice and the establishment of the system of discovery set forth in these Local Rules, has determined that the following periods of time may be excluded, under 18 U.S.C. § 3161(h)(8)(A), to serve the ends of justice in order to accomplish such discovery:

(1) No more than fourteen (14) days from arraignment, the time period available to the defendant for consideration whether to participate in the automatic discovery process, if the defendant files the Waiver provided under L.R. 116.1(B).

(2) No more than twenty-eight (28) days from arraignment, during which time period the parties are developing their discovery plans and producing discovery under the automatic discovery process, if the defendant does not file the Waiver provided under L.R. 116.1(B).

(3) No more than fourteen (14) days from the filing of a copy of any letter requesting discovery under L.R. 116.3(A).

(B) The parties shall inform the court upon agreement or in connection with any Status Conference convened under L.R. 116.5 and any Pretrial Conference convened under L.R. 117.1 of the periods for which orders of excludable time should be entered. The time periods indicated above will not be automatically excluded. All periods of excludable delay must be included in a separate order issued by the district judge or magistrate judge detailing the time period to be covered.

Rule 112.4
CORPORATE DISCLOSURE STATEMENT

(A) A nongovernmental corporate party to a criminal proceeding in this court must file a statement that identifies any parent corporation and any publicly held corporation that owns 10 percent or more of its stock or states there is no such corporation.

(B) If an organization is a victim of the alleged criminal activity, the government must file a statement identifying the victim. If the organizational victim is a corporation, the statement must also disclose the information required by Local Rule 112.4(A) charged in any indictment or information.

(C) A party must file the Local Rule 112.4(A) statement upon its

first appearance, pleading, petition, motion, response or other request addressed to the court and must promptly supplement the statement upon any change in the identification that the statement requires.

Rule 116.1
DISCOVERY IN CRIMINAL CASES

(A) Discovery Alternatives.

(1) *Automatic Discovery.* In all felony cases, unless a defendant waives automatic discovery, all discoverable material and information in the possession, custody, or control of the government and that defendant, the existence of which is known, or by the exercise of due diligence may become known, to the attorneys for those parties, must be disclosed to the opposing party without formal motion practice at the times and under the automatic discovery procedures specified in this Local Rule.

(2) *Non-automatic Discovery.* In felony cases, if the defendant waives automatic discovery, and in non-felony cases the defendant must obtain discovery directly through the provisions of the Federal Rules of Criminal Procedure in the manner provided under Local Rule 116.3.

(B) Waiver.

A defendant shall be deemed to have requested all the discovery authorized by Fed. R. Crim. P. 16(a)(1)(A)-(D) unless that defendant files a Waiver of Request for Disclosure (the "Waiver") at, or within fourteen (14) days after, arraignment. If the Waiver is not timely filed, the defendant shall be subject to the correlative reciprocal discovery obligations of Fed. R. Crim. P. 16(b) and of this Local Rule and shall be deemed to have consented to the exclusion of time for Speedy Trial Act purposes as provided in L.R.112.2(A)(2).

(C) Automatic Discovery Provided By The Government.

(1) *Following Arraignment.* Unless a defendant has filed the Waiver, within twenty-eight (28) days of arraignment — or within fourteen (14) days of receipt by the government of a written statement by the defendant that no Waiver will be filed — the government must produce to the defendant:

(a) Fed. R. Crim. P. 16 Materials — All of the information to which the defendant would be entitled under Fed. R. Crim. P. 16(a)(1)(A)-(D).

(b) *Search Materials* — A copy of any search warrant (with supporting application, affidavit, and return) and a written description of any consent search or warrantless search (including an inventory of evidence seized):

(i) which resulted in the seizure of evidence or led to the discovery of evidence that the government intends to offer as part of its case-in-chief; or

(ii) was obtained for or conducted of the defendant's property, residence, place of business, or person, in connection with investigation of the charges contained in the indictment.

(c) *Electronic Surveillance* —

(i) A written description of any interception of wire, oral, or electronic communications as defined in 18 U.S.C. § 2510, relating to the charges in the indictment in which the defendant was intercepted and a statement whether the government intends to offer any such communications as evidence in its case-in-chief; and

(ii) A copy of any application for authorization to intercept such communications relating to the charges contained in the indictment in which the defendant was named as an interceptee or pursuant to which the defendant was intercepted, together with all supporting affidavits, the court orders authorizing such interceptions, and the court orders directing the sealing of intercepted communications under 18 U.S.C. § 2518(a).

(d) *Consensual Interceptions* —

(i) A written description of any interception of wire, oral, or electronic communications, relating to the charges contained in the indictment, made with the consent of one of the parties to the communication ("consensual interceptions"), in which the defendant was intercepted or which the government intends to offer as evidence in its case-in-chief.

(ii) Nothing in this subsection is intended to determine the circumstances, if any, under which, or the time at which, the attorney for the government must review and produce communications of a defendant in custody consensually recorded by the institution in which that defendant is held.

(e) *Unindicted Coconspirators* — As to each conspiracy charged in the indictment, the name of any person asserted to be a known unindicted coconspirator. If subsequent litigation requires that the name of any such unindicted coconspirator be referenced in any filing directly with the court, that information must be redacted from any public filing and be filed under L.R. 7.2 pending further order of the court.

(f) *Identifications* —

(i) A written statement whether the defendant was a subject of an investigative identification procedure used with a witness the government anticipates calling in its case-in-chief involving a line-up, show-up, photospread or other display of an image of the defendant.

(ii) If the defendant was a subject of such a procedure, a copy of any videotape, photospread, image or other tangible evidence reflecting, used in or memorializing the identification procedure.

(2) *Exculpatory Information.* The timing and substance of the disclosure of exculpatory evidence is specifically provided in L.R. 116.2.

(D) Automatic Discovery Provided by the Defendant.

In felony cases if the defendant has not filed the Waiver, within twenty-eight (28) days after arraignment, the defendant must produce to the government all material described in Fed. R. Crim. P. 16(b)(1)(A) and (B).

Rule 116.2
DISCLOSURE OF EXCULPATORY EVIDENCE

(A) Definition. Exculpatory information includes, but may not be limited to, all information that is material and favorable to the accused because it tends to:

(1) Cast doubt on defendant's guilt as to any essential element in any count in the indictment or information;

(2) Cast doubt on the admissibility of evidence that the government anticipates offering in its case-in-chief, that might be subject to a motion to suppress or exclude, which would, if allowed, be appealable pursuant to 18 U.S.C. § 3731;

(3) Cast doubt on the credibility or accuracy of any evidence that the government anticipates offering in its case-in-chief; or

(4) Diminish the degree of the defendant's culpability or the defendant's Offense Level under the United States Sentencing Guidelines.

(B) Timing of Disclosure by the Government. Unless the defendant has filed the Waiver or the government invokes the declination procedure under Rule 116.6, the government must produce to that defendant exculpatory information in accordance with the following schedule:

(1) *Within the time period designated in L.R. 116.1(C)(1):*

(a) Information that would tend directly to negate the defendant's guilt concerning any count in the indictment or information.

(b) Information that would cast doubt on the admissibility of evidence that the government anticipates offering in its case-in-chief and that could be subject to a motion to suppress or exclude, which would, if allowed, be appealable under 18 U.S.C. § 3731.

(c) A statement whether any promise, reward, or inducement has been given to any witness whom the government anticipates calling in its case-in-chief, identifying by name each such witness and each promise, reward, or inducement, and a copy of any promise, reward, or inducement reduced to writing.

(d) A copy of any criminal record of any witness identified by name whom the government anticipates calling in its case-in-chief.

(e) A written description of any criminal cases pending against any witness identified by name whom the government anticipates calling in its case-in-chief.

(f) A written description of the failure of any percipient witness identified by name to make a positive identification of a defendant, if any identification procedure has been held with such a witness with respect to the crime at issue.

(2) *Not later than twenty-one (21) days before the trial date established by the judge who will preside:*

(a) Any information that tends to cast doubt on the credibility or accuracy of any witness whom or evidence that the government anticipates calling or offering in its case-in-chief.

(b) Any inconsistent statement, or a description

of such a statement, made orally or in writing by any witness whom the government anticipates calling in its case-in-chief, regarding the alleged criminal conduct of the defendant.

(c) Any statement or a description of such a

statement, made orally or in writing by any person, that is inconsistent with any statement made orally or in writing by any witness the government anticipates calling in its case-in-chief, regarding the alleged criminal conduct of the defendant.

(d) Information reflecting bias or prejudice against the defendant by any witness whom the government anticipates calling in its case-in-chief.

(e) A written description of any prosecutable federal offense known by the government to have been committed by any witness whom the government anticipates calling in its case-in-chief.

(f) A written description of any conduct that may be admissible under Fed. R. Evid. 608(b) known by the government to have been committed by a witness whom the government anticipates calling in its case-in-chief.

(g) Information known to the government of any mental or physical impairment of any witness whom the government anticipates calling in its case-in-chief, that may cast doubt on the ability of that witness to testify accurately or truthfully at trial as to any relevant event.

(3) *No later than the close of the defendant's case: Exculpatory information regarding any witness or evidence that the government intends to offer in rebuttal.*

(4) *Before any plea or to the submission by the defendant of any objections to the Pre-Sentence Report, whichever first occurs:* A written summary of any information in the government's possession that tends to diminish the degree of the defendant's culpability or the defendant's Offense Level under the United States Sentencing Guidelines.

(5) If an item of exculpatory information can reasonably be deemed to fall into more than one of the foregoing categories, it shall be deemed for purposes of determining when it must be produced to fall into the category which requires the earliest production.

Rule 116.3
DISCOVERY MOTION PRACTICE

(A) Within forty-two (42) days of arraignment, any party by letter to the opposing party may request discovery. The opposing party shall reply in writing to the requests contained in such letter, no later than fourteen (14) days after its receipt, stating whether that party agrees or does not agree to furnish the requested discovery and, if that party agrees, when the party will furnish the requested discovery. A copy of the discovery request letter and any response must also be filed with the Clerk's Office.

(B) If a party agrees in writing to provide the requested discovery, the agreement shall be enforceable to the same extent as a court order requiring the agreed-upon disclosure.

(C) If a party does not agree to provide the requested information, that party must provide a written statement of the basis for its position.

(D) A defendant participating in automatic discovery must not request information expressly required to be produced under L.R. 116.1; all such information is by these Local Rules deemed ordered by the court to be produced.

(E) Except in an emergency, no discovery motion, or request for a bill of particulars, shall be filed until the opposing party has declined in writing to provide the requested discovery or has failed to respond in writing within fourteen (14) days of receipt to a written request.

(F) Except in an emergency, before filing any discovery motion, the moving party shall confer with opposing counsel to attempt to eliminate or narrow the areas of disagreement. In the motion, the moving party shall certify that a good faith attempt was made to eliminate or narrow the issues raised in the motion through a conference with opposing counsel or that a good faith attempt to comply with this requirement was precluded by the opposing party's unwillingness to confer.

(G) Any discovery motion shall be filed within fourteen (14) days of receipt of the opposing party's written reply to the letter requesting discovery described in subdivision (A) of this Local Rule or the passage of the period within which the opposing party has the obligation to reply pursuant to subdivision (A). The discovery motion shall state with particularity each request for discovery, followed by a concise statement of the moving party's position with respect to such request, including citations of authority.

(H) In multidefendant cases, except with leave of court, the defendant parties must confer and, to the maximum extent possible in view of any potentially differing positions of the defendants, consolidate their written requests to the government for any discovery. If a discovery motion is to be filed, the defendant parties must endeavor to the maximum extent possible to file a single consolidated motion. Each defendant need not join in every written request submitted to the government or filed in a consolidated motion, but all defense requests and motions, whether or not joined in by each defendant, must to the maximum extent possible be contained within a single document or filing.

(I) The opposing party must file its response to all discovery motions within fourteen (14) days of receipt. In its response, the opposing party, as to each request, shall make a concise statement of the opposing party's basis for opposing that request, including citations to authority.

(J) The procedure set forth in this section shall apply to subsequent requests for discovery after the initial forty-two (42) day period. When filing a discovery motion based on a subsequent discovery request, the moving party must additionally certify that the discovery request resulting in the motion was prompted by information not known, or issues not reasonably foreseeable, to the moving party before the deadline for discovery motions, or that the delay in making the request was for other good cause, which the moving party must describe with particularity.

Rule 116.4
SPECIAL PROCEDURES FOR TAPE RECORDINGS

(A) Availability of Tape Recordings.

(1) The government must provide at least one copy of all tape recordings in its possession that are discoverable for examination and review by the defendant parties.

(2) If a defendant requests additional copies, the government must make arrangements to provide or to enable that defendant to make such copies at that defendant's expense.

(3) If in a multidefendant case any defendant is in custody, the government must insure that an extra copy of all tape recordings is available for review by the defendant(s) in custody.

(B) Composite Tapes, Preliminary Transcripts and Final Transcripts. The parties must make arrangements promptly to provide or make available for inspection and copying by opposing counsel all:

(1) Composite electronic surveillance or consensual interception tapes to be used in that party's case-in-chief at trial, once prepared;

(2) Preliminary transcripts, once prepared. A preliminary transcript may not be used at trial or in any hearing on a pretrial motion without the prior approval of the court based on a finding that the preliminary transcript is accurate in material respects and it is in the interests of the administration of justice to use it.

(3) Final transcripts, once prepared.

(4) Nothing in this Local Rule shall be construed to require a party to prepare composite tapes, or preliminary or final transcripts, of any tape recording.

Rule 116.5
STATUS CONFERENCES AND STATUS REPORTS PROCEDURE

(A) Initial Status Conference. Unless all parties advise the Magistrate Judge that such a conference is not necessary, and the Magistrate Judge concurs, on or about the 42nd day following arraignment, the Magistrate Judge shall convene an Initial Status Conference with the attorneys for the parties who will conduct the trial in any felony or Class A misdemeanor case to be decided by a district judge. The discussion at the conference must include the following issues, and any other issues relevant to the progress of the case:

(1) Whether relief should be granted from the otherwise applicable timing requirements imposed by L.R. 116.3.

(2) Whether the defendant requests discovery concerning expert witnesses under Fed. R. Crim. P. 16(a)(1)(E). If the defendant requests the disclosure required by Fed. R. Crim. P. 16(a)(1)(E), what date should be established for response by the government and what date should be established for reciprocal discovery from the defendant concerning expert witnesses required under Fed. R. Crim. P. 16(b)(1)(C).

(3) Whether a party anticipates providing additional discovery as a result of its future receipt of information, documents, or reports of examinations or tests.

(4) Whether a motion date should be established under Fed. R. Crim. P. 12(c).

(5) What periods of excludable delay should be ordered under the Speedy Trial Act at the time of the conference.

(6) Whether a trial is anticipated and, if so, its anticipated length.

(7) What date should be established for the Final Status Conference and/or any Interim Status Conferences.

(B) Scheduling and Status Report.

After any Status Conference, the Magistrate Judge shall file for the District Judge who will preside at trial an Interim Status and Scheduling Report which:

(1) Outlines the scheduling and completion of discovery and filing of motions;

(2) Identifies whether the case involves unusual or complex issues by reason of which an early joint conference of the District Judge and Magistrate Judge with all attorneys would be useful;

(3) Identifies any features of the case that may deserve special attention or modification of the standard schedule.

(4) Identifies and orders periods of excludable delay that are applicable at the time of the report.

(5) Identifies and returns the file to the district judge upon an indication that the defendant intends to plead guilty.

(C) Final Status Conference. Before the Magistrate Judge issues the Final Status Report required by subdivision (D) of this Local Rule, the Magistrate Judge shall convene a Final Status Conference with the attorneys for the parties who will conduct the trial. Prior to this conference, counsel shall confer and, not later than three (3) business days before the conference, prepare and file a joint memorandum addressing the following issues, and any other issue relevant to the progress of the case, which counsel must be prepared to discuss at the conference:

(1) Whether there are outstanding discovery issues not yet presented or resolved by the Court;

(2) Whether a party anticipates providing additional discovery as a result of its future receipt of information, documents, or reports of examinations or tests;

(3) Whether the defendant intends to raise a defense of insanity or public authority;

(4) Whether the government has requested notice of alibi by the defendant and, if so, whether the defendant has timely responded;

(5) Whether the defendant has filed, or intends to file, any motion to sever, dismiss, or suppress, or any other motion requiring a ruling by the District Court before trial;

(6) Whether a schedule should be set concerning any matter in the case other than trial;

(7) Whether the parties have discussed the possibility of an early resolution of the case without trial and, if so, the results of that discussion;

(8) Whether there are periods of excludable delay under the Speedy Trial Act as to which the parties agree, and what they are, and whether there are any disagreements, and what they are, to enable the Magistrate Judge to rule on periods of excludable delay at the Final Status Conference; and

(9) The estimated length of trial.

(D) Final Status Report. After the Final Discovery Conference, and any continuation of it necessary to assure that the discovery to have been provided prior to the conference is complete, the Magistrate Judge shall file for the District Judge who will preside at trial a Final Status Report that addresses:

(1) Whether a trial will be necessary;

(2) Whether all discovery to be provided under this Local Rule before the Initial Pretrial Conference with the trial judge is complete and, if not, why the case should not remain before the Magistrate Judge until discovery is complete;

(3) Whether the defendant has filed, or intends to file, any motion to sever, dismiss, or suppress and, if so, the briefing schedule established by the Magistrate Judge;

(4) The total amount of time that has been ordered excluded thus far and the amount of time remaining under the Speedy Trial Act before trial must commence, and whether there are any pending or anticipated motions that will cause additional excludable time for Speedy Trial Act purposes;

(5) The estimated length of trial;

(6) Any other matters relevant to the progress or resolution of the case.

Rule 116.6
DECLINATION OF DISCLOSURE AND PROTECTIVE ORDERS

(A) Declination. If in the judgment of a party it would be detrimental to the interests of justice to make any of the disclosures required by these Local Rules, such disclosures may be declined, before or at the time that disclosure is due, and the opposing party advised in writing, with a copy filed in the Clerk's Office, of the specific matters on which disclosure is declined and the reasons for declining. If the opposing party seeks to challenge the declination, that party shall file a motion to compel that states the reasons why disclosure is sought. Upon the filing of such motion, except to the extent otherwise provided by law, the burden shall be on the party declining disclosure to demonstrate, by affidavit and supporting memorandum citing legal authority, why such disclosure should not be made. The declining party may file its submissions in support of declination under seal pursuant to L.R. 7.2 for the Court's *in camera* consideration. Unless otherwise ordered by the Court, a redacted version of each such submission shall be served on the moving party, which may reply.

(B) Ex Parte Motions for Protective Orders. This Local Rule does not preclude any party from moving under L.R. 7.2 and *ex parte* (i.e. without serving the opposing party) for leave to file an *ex parte* motion for a protective order with respect to any discovery matter. Nor does this Local Rule limit the Court's power to accept or reject an *ex parte* motion or to decide such a motion in any manner it deems appropriate.

Rule 116.7
DUTY TO SUPPLEMENT

The duties established by these Local Rules are continuing. Each party is under a duty, when it learns that a prior disclosure was in some respect inaccurate or incomplete to supplement promptly any disclosure required by these Local Rules or by the Federal Rules of Criminal Procedure.

Rule 116.8
NOTIFICATION TO RELEVANT LAW ENFORCEMENT AGENCIES OF DISCOVERY OBLIGATIONS

The attorney for the government shall inform all federal, state, and local law enforcement agencies formally participating in the criminal investigation that resulted in the case of the discovery obligations set forth in these Local Rules and obtain any information subject to disclosure from each such agency.

Rule 116.9
PRESERVATION OF NOTES

(A) All contemporaneous notes, memoranda, statements, reports, surveillance logs, tape recordings, and other documents memorializing matters relevant to the charges contained in the indictment made by or in the custody of any law enforcement officer whose agency at the time was formally participating in an investigation intended, in whole or in part, to result in a federal indictment shall be preserved until the entry of judgment unless otherwise ordered by the Court.

(B) These Local Rules do not require the preservation of rough drafts of reports after a subsequent draft of final report is prepared.

(C) These Local Rules do not require modification of a government agency's established procedure for the retention and disposal of documents when the agency does not reasonably anticipate a criminal prosecution.

Rule 117.1
PRETRIAL CONFERENCES

(A) Initial Pretrial Conference. After receiving the Magistrate Judge's Final Status Report, and at least thirty (30) days before trial, or at the earliest practicable shorter time before trial consistent with the Speedy Trial Act, the judge who will preside at trial must conduct an Initial Pretrial Conference, which counsel who will conduct the trial must attend. At the Initial Pretrial Conference the judge must:

(1) Attempt to determine if the case will be resolved by a guilty plea, a plea of *nolo contendere*, or dismissal.

(2) If necessary, schedule a hearing on any motion to dismiss, suppress, or sever or any other motion requiring pretrial resolution.

(3) Establish a reliable trial date.

(4) Unless the declination procedure provided by L.R. 116.6 has previously been invoked, order the government to disclose to the defendant no later than twenty-one (21) days before the trial date:

(a) The exculpatory information identified in L.R. 116.2.

(b) A general description (including the approximate date, time and place) of any crime, wrong, or act the government proposes to offer

pursuant to Fed. R. Evid. 404(b).

(5) Determine whether the parties have furnished statements, as defined by 18 U.S.C. §3500(e) and Fed. R. Crim. P. 26.2(f), of witnesses they intend to call in their cases-in-chief and, if not, when they propose to do so.

(6) Determine whether any party objects to complying with the presumptive timing directives of L.R. 117.1(A)(8) and (A)(9) for the disclosure of witnesses and identification of exhibits and materials. If any party expresses an objection, the court may decide the issue(s) presented at the Initial Pretrial Conference or may order briefing and/or later argument on such issue(s).

(7) Establish a schedule for the filing and briefing of possible motions in limine and for the filing of proposed voir dire questions, proposed jury instructions, and, if appropriate, trial briefs.

(8) Unless an objection has been made pursuant to L.R. 117.1(A)(6), order that at least seven (7) days before the trial date the government must:

(a) Provide the defendant with the names and addresses of witnesses the government intends to call at trial in its case-in-chief. If the government subsequently forms an intent to call any other witness, the government shall promptly notify the defendant of the name and address of that prospective witness.

(b) Provide the defendant with copies of the exhibits and a premarked list of the exhibits the government intends to offer in its case-in-chief. If the government subsequently decides to offer any additional exhibit in its case-in-chief, the government shall promptly provide the opposing party with a copy of the exhibit and a supplemental exhibit list.

(9) Unless an objection has been made pursuant to L.R. 117.1(A)(6), order that at least three (3) days before the trial the defendant must provide the government with witness and exhibit identification and materials to the same extent the government is obligated to do so under L.R. 117.1(A)(8).

(10) Determine whether the parties will stipulate to any facts that may not be in dispute.

(11) Establish a date for a Second Pretrial Conference, to be held not more than seven (7) days before the trial date, to resolve any matters that must be decided before trial.

(12) Resolve any issues concerning excludable delay under the Speedy Trial Act.

(B) Special Orders. The judge who will preside at trial may, upon motion of a party or on the judge's own initiative, modify any of the requirements of paragraph (A) of this Local Rule if the judge determines that there are factors in the particular case that make it in the interests of justice to do so.

(C) Subsequent Pretrial Conferences. At least one subsequent Pretrial Conference shall be held unless all parties advise the court that such a conference is not necessary and the judge concurs.

Rule 118.1
EFFECTIVE DATE

These Local Rules shall become effective on December 1, 1998. They shall, except as applicable time periods may have run, govern all actions pending or commenced after the effective date. Where justice so requires, proceedings in cases on the effective date shall be governed by the practice of the court before the adoption of these Local Rules.

Rule 201
REFERENCE TO BANKRUPTCY COURT

Pursuant to 28 USC §157(a), any and all cases arising under Title 11 United States Code and any and all proceedings arising under Title 11 or arising in or related to a case under Title 11 shall be referred to the judges of the bankruptcy court for the District of Massachusetts.

Rule 202
BANKRUPTCY COURT JURY TRIALS

Pursuant to 28 U.S.C. sec. 157(e), the judges of the bankruptcy court for the District of Massachusetts are specially designated to conduct jury trials with the express consent of the parties in any proceeding which may be heard by a bankruptcy judge to which a right to jury trial applies.

Rule 203
BANKRUPTCY APPEALS

(A) The bankruptcy court is authorized and directed to dismiss an appeal filed after the time specified in Bankruptcy Rule 8002 or an appeal in which the appellant has failed to file a designation of the items for the record or a statement of the issues as required by Bankruptcy Rule 8006. The bankruptcy court is also authorized and directed to decide motions to extend the foregoing deadlines and to consolidate appeals which present similar issues from a common record. Bankruptcy court orders entered under this subsection may be reviewed by the district court on motion filed within ten (10) days of the entry of the order.

(B) The briefing schedule specified by Bankruptcy Rule 8009 may be altered only by order of the District Court. If the clerk of the district court does not receive appellant's brief within the time specified by said Rule 8009, he shall forthwith provide the district judge to whom the appeal has been assigned with a proposed order for dismissal of the appeal.

(C) Upon receipt of the district court's opinion disposing of the appeal, the district court clerk shall enter judgment in accordance with Bankruptcy Rule 8016(a) and shall immediately transmit to each party and to the clerk of the bankruptcy court a notice of entry together with a copy of the court's opinion.

(D) The bankruptcy court clerk shall enclose a copy of this rule with the notice of appeal given to each party in accordance with Bankruptcy Rule 8004: provided, however, that failure of the clerk to enclose a copy of this rule shall not suspend its operation.

(E) This rule is not intended to restrict the district court's discretion as to any aspect of any appeal.

Rule 204
BANKRUPTCY COURT LOCAL RULES

Pursuant to Rule 9029(a) of the Federal Rules of Bankruptcy Procedure, the judges of the bankruptcy court for the District of Massachusetts are authorized to make and amend rules of practice and procedure as they may deem appropriate, subject to the requirements of Fed. R. Civ. P. 83. A certified copy of any rules and/or amendments as adopted by the judges of the bankruptcy court, together with a copy of the notice and all comments received regarding the rule, shall be provided to the Clerk of the District Court within 14 days of the date adopted. Once each year, the judges of the district court will review all changes to the local rules of the bankruptcy court. If, after review, the judges of the district court determine that modifications need to be made to any rule, a report will be provided to the judges of the bankruptcy court by March 31.

Rule 205
DISCIPLINARY REFERRALS BY BANKRUPTCY JUDGES

A judge of the bankruptcy court for the District of Massachusetts is authorized as a judicial officer to make referrals for disciplinary proceedings as provided under LR 83.6(5)(A).

Appendix A
LOCAL RULE 4.5 SUPPLEMENT

Following are fees to be charged for services to be performed by clerks of the district courts. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 2, 4 and 5. No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and Bankruptcy Administrator programs.

A. Filing Fees - New Civil Action

1. The filing fee for a complaint is $350.00. Effective April 9, 2006.
2. The filing fee for a notice of removal is $350.00. Effective April 9, 2006.
3. The filing fee for an application for writ of habeas corpus is $5.00.

B. Filing Fee - Appeal

1. For docketing a case on appeal or review, or docketing any

other proceeding, $455. A separate fee shall be paid by each party filing a notice of appeal in the district court, but parties filing a joint notice of appeal in the district court are required to pay only one fee. A docketing fee shall not be charged for the docketing of an application for the allowance of an interlocutory appeal under 28 U.S.C. § 1292(b), unless the appeal is allowed. The costs will be broken down as follows: $450 as specified in the revised Miscellaneous Fee Schedule, and the $5.00 fee required by 28 U.S.C. § 1917. These fees are payable TO THE DISTRICT COURT CLERK when the notice of appeal is filed.

C. Filing Fee - Miscellaneous Fees

1. For filing or indexing any document not in a case or proceeding for which a filing fee has been paid, $39.
2. For every search of the records of the district court conducted by the clerk of the district court or a deputy clerk, $26 per name or item searched. This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access.
3. For certification of any document or paper, whether the certification is made directly on the document or by separate instrument, $9. For exemplification of any document or paper, twice the amount of the fee for certification.
4. For reproducing any record or paper, $.50 per page. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records. This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access.
5. For reproduction of recordings of proceedings, regardless of the medium, $26, including the cost of materials. This fee shall apply to services rendered on behalf of the United States, if the reproduction of the recording is available electronically.
6. For each microfiche sheet of film or microfilm jacket copy of any court record, where available, $5.
7. For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, $45.
8. For a check paid into the court which is returned for lack of funds, $45.
9. For an appeal to a district judge from a judgment of conviction by a magistrate in a misdemeanor case, $32.
10. For original admission of attorneys to practice, $200 each, including a certificate of admission. For a duplicate certificate of admission or certificate of good standing, $15. The fee for filing a motion for leave to appear and practice in a particular case in the District of Massachusetts is $50.00.
11. The court may charge and collect fees commensurate with the cost of providing copies of the local rules of court. The court may also distribute copies of the local rules without charge.
12. The clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts.
13. For filing an action brought under Title III of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996, P.L. 104-114, 110 Stat. § 785 (1996), $5,431. (This fee is in addition to the filing fee prescribed in 28 U.S.C. 1914(a) for instituting any civil action other than a writ of habeas corpus.)

ELECTRONIC PUBLIC ACCESS
MISCELLANEOUS FEE SCHEDULE

As directed by Congress, the Judicial Conference has determined that the following fees are necessary to reimburse expenses incurred by the judiciary in providing electronic public access to court records. These fees shall apply to the United States unless otherwise stated. No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and bankruptcy administrator programs.

I. For electronic access to court data via dial up service: sixty cents per minute. For electronic access to court data via a federal judiciary Internet site: **eight cents per page, with the total for any document, docket sheet, or case-specific report not to exceed the fee for thirty pages**– provided however that transcripts of federal court proceedings shall not be subject to the thirty-page fee limit. Attorneys of record and parties in a case (including pro se litigants) receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. No fee is owed under this provision until an account holder accrues charges of more than $10 in a calendar year. Consistent with Judicial Conference policy, courts may, upon a showing of cause, exempt indigents, bankruptcy case trustees, individual researchers associated with educational institutions, courts, section 501(c)(3) not-for-profit organizations and pro bono ADR neutrals from payment of these fees. Courts must find that parties from the classes of persons or entities listed above seeking exemption have demonstrated that an exemption is necessary in order to avoid unreasonable burdens and to promote public access to information. Any user granted an exemption agrees not to sell for profit the data obtained as a result. Exemptions may be granted for a definite period of time and may be revoked at the discretion of the court granting the exemption.

II. For printing copies of any record or document accessed electronically at a public terminal in the courthouse: ten cents per page. This fee shall apply to services rendered on behalf of the United States if the record requested is remotely available through electronic access.

III. For every search of court records conducted by the PACER Service Center, $20.